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ARKANSAS CODE OF 1987 ANNOTATED

VOLUME 24B

2014 Replacement

TITLE 23: PUBLIC UTILITIES AND REGULATED INDUSTRIES (CHAPTERS 88-115)

Prepared by the Editorial Staff of the Publisher
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Sources

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Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2014 Ark. LEXIS 224 (April 10, 2014) and 2014 Ark. App. LEXIS 281 (April 9, 2014).

Federal Supplement through April 28, 2014.

Federal Reporter 3d Series through April 28, 2014.

United States Supreme Court Reports through April 28, 2014.

Bankruptcy Reporter through April 28, 2014.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 74, p. 549.

ALR Fed. 2d through Volume 71, p. 197.

Titles of the Arkansas Code

1. General Provisions
2. Agriculture
3. Alcoholic Beverages
4. Business and Commercial Law
5. Criminal Offenses
6. Education
7. Elections
8. Environmental Law
9. Family Law
10. General Assembly
11. Labor and Industrial Relations
12. Law Enforcement, Emergency Management, and Military Affairs
13. Libraries, Archives, and Cultural Resources
14. Local Government
15. Natural Resources and Economic Development
16. Practice, Procedure, and Courts
17. Professions, Occupations, and Businesses
18. Property
19. Public Finance
20. Public Health and Welfare
21. Public Officers and Employees
22. Public Property
23. Public Utilities and Regulated Industries
24. Retirement and Pensions
25. State Government
26. Taxation
27. Transportation
28. Wills, Estates, and Fiduciary Relationships

User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 30-59 IN VOLUME 23A; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A)

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER.

1. GENERAL PROVISIONS.
2. REGULATORY COMMISSIONS.
3. REGULATION OF UTILITIES AND CARRIERS GENERALLY.
4. REGULATION OF RATES AND CHARGES GENERALLY.

5-9. [RESERVED.]

10. TRANSPORTATION OF PASSENGERS AND FREIGHT GENERALLY.
11. ESTABLISHMENT AND ORGANIZATION OF RAILROADS.
12. OPERATION AND MAINTENANCE OF RAILROADS.
13. MOTOR CARRIERS.
14. AIR COMMERCE REGULATIONS.
15. PIPELINE COMPANIES.
16. MISCELLANEOUS PROVISIONS RELATING TO CARRIERS.
17. TELEPHONE AND TELEGRAPH COMPANIES.
18. LIGHT, HEAT, AND POWER UTILITIES.
19. CABLE AND VIDEO COMMUNICATIONS.

20-29. [RESERVED.]

SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES

CHAPTER.

30. GENERAL PROVISIONS. [REPEALED.]
31. STATE BANK DEPARTMENT AND STATE BANKING BOARD. [REPEALED.]
32. GENERAL PROVISIONS.
33. INSOLVENCY AND LIQUIDATION. [REPEALED.]
34. MISCELLANEOUS VIOLATIONS OF BANKING LAWS. [REPEALED.]
35. CREDIT UNIONS.
36. INDUSTRIAL LOAN INSTITUTIONS.
37. SAVINGS AND LOAN ASSOCIATIONS.
38. BUILDING AND LOAN ASSOCIATIONS — MISCELLANEOUS PROVISIONS. [REPEALED.]
39. MORTGAGE LOAN COMPANIES AND LOAN BROKERS.
40. ARKANSAS PREPAID FUNERAL BENEFITS LAW.
41. SALE OF CHECKS. [REPEALED.]
42. ARKANSAS SECURITIES ACT.
43. INVESTOR PROTECTION TAKEOVER ACT. [REPEALED.]
44. COMMODITIES FUTURES.
45. ARKANSAS BANKING CODE OF 1997.
46. STATE BANK DEPARTMENT AND STATE BANKING BOARD.
47. BANK POWERS — SUBSIDIARIES.
48. ORGANIZATION AND OPERATION.
49. DISSOLUTION AND LIQUIDATION.

CHAPTER.
50. MISCELLANEOUS VIOLATIONS OF BANKING LAWS.
51. ARKANSAS TRUST INSTITUTIONS ACT.
52. CHECK-CASHERS ACT. [REPEALED.]
53. ARKANSAS HOME LOAN PROTECTION ACT.
54. REVERSE MORTGAGE PROTECTION ACT.
55. UNIFORM MONEY SERVICES ACT.
56-59. [RESERVED.]

SUBTITLE 3. INSURANCE

CHAPTER.
60. GENERAL PROVISIONS.
61. STATE INSURANCE DEPARTMENT.
62. KINDS OF INSURANCE — REINSURANCE.
63. INSURANCE COMPANIES GENERALLY.
64. LICENSEES, AGENTS, BROKERS, ADJUSTERS, AND CONSULTANTS.
65. UNAUTHORIZED INSURERS AND SURPLUS LINES.
66. TRADE PRACTICES.
67. RATES AND RATING ORGANIZATIONS.
68. REHABILITATION AND LIQUIDATION OF INSURANCE COMPANIES.
69. DOMESTIC STOCK AND MUTUAL INSURERS.
70. RECIPROCAL INSURERS.
71. STIPULATED PREMIUM INSURERS.
72. MUTUAL ASSESSMENT LIFE AND DISABILITY INSURERS.
73. FARMERS' MUTUAL AID ASSOCIATIONS.
74. FRATERNAL BENEFIT SOCIETIES.
75. HOSPITAL AND MEDICAL SERVICE CORPORATIONS.
76. HEALTH MAINTENANCE ORGANIZATIONS.
77. AUTOMOBILE CLUBS OR ASSOCIATIONS.
78. BURIAL ASSOCIATIONS.
79. INSURANCE POLICIES GENERALLY.
80. INSURANCE POLICIES — SIMPLIFICATION.
81. LIFE INSURANCE POLICIES AND ANNUITIES.
82. INDUSTRIAL LIFE INSURANCE.
83. GROUP LIFE INSURANCE AND ANNUITIES.
84. STANDARD VALUATION LAW FOR LIFE INSURANCE AND ANNUITIES.
85. ACCIDENT AND HEALTH INSURANCE.
86. GROUP AND BLANKET ACCIDENT AND HEALTH INSURANCE.
87. MODEL ACT FOR THE REGULATION OF CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE.
88. PROPERTY INSURANCE.
89. CASUALTY INSURANCE.
90. ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT.
91. PREPAID LEGAL INSURANCE.
92. MULTIPLE EMPLOYER TRUSTS AND SELF-INSURED PLANS.
93. CONTINUING CARE PROVIDERS.
94. LIABILITY RISK RETENTION.
95. RISK-SHARING PLANS FOR PROPERTY AND CASUALTY INSURANCE.
96. ARKANSAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.
97. LONG-TERM CARE INSURANCE.
98. MINIMUM BASIC BENEFIT POLICIES AND SUBSCRIPTION CONTRACTS.
99. HEALTHCARE PROVIDERS.
100. STATE INSURANCE DEPARTMENT CRIMINAL INVESTIGATION DIVISION TRUST FUND ACT.
101. CREDITOR-PLACED INSURANCE.
102. ARKANSAS EARTHQUAKE AUTHORITY ACT.

CHAPTER.
103. TITLE INSURANCE.
104-109. [RESERVED.]

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER.
110. ARKANSAS HORSE RACING LAW.
111. ARKANSAS GREYHOUND RACING LAW.
112. ARKANSAS MOTOR VEHICLE COMMISSION ACT.
113. LOCAL OPTION HORSE RACING AND GREYHOUND RACING ELECTRONIC GAMES OF SKILL ACT.
114. CHARITABLE BINGO AND RAFFLES ENABLING ACT.
115. ARKANSAS SCHOLARSHIP LOTTERY ACT.

SUBTITLE 3. INSURANCE

Effective Dates. Acts 1959, No. 148, § 697: 12:01 A.M., Jan. 1, 1960.

CASE NOTES

Waiver of Premiums.

The insurance code among other things gave the Insurance Commissioner the power to approve the form of policies; however, that act did not change the case law applicable to the waiver of premiums during disability. J.C. Penney Life Ins. Co. v. Warren, 268 Ark. 1132, 599 S.W.2d 415 (Ct. App. 1980).

Cited: Cherry v. Tanda, Inc., 327 Ark. 600, 940 S.W.2d 457 (1997).

CHAPTER 88

PROPERTY INSURANCE

SUBCHAPTER.
1. General Provisions.
2. Antiarson Applications.
3. Rural Risk Underwriting.
4. Fire Loss Reporting Act of 2003.
5. Portable Electronics Insurance.

RESEARCH REFERENCES

ALR. Prejudgment interest: insured's right to recover from insurer on amount of fire loss. 5 A.L.R.4th 126.

"Other insurance" within meaning of insurance policy provisions prohibiting insured from obtaining other insurance on same property. 7 A.L.R.4th 494.

Scope of clause excluding from contractor's or similar liability policy damage to property in care, custody, or control of insured. 8 A.L.R.4th 563.

Obtaining new property insurance as cancelling existing insurance. 14 A.L.R.4th 781.

Nondisclosure of information by insured regarding value of property as ground for avoiding liability under property insurance policy. 15 A.L.R.4th 1109.

Clause excluding from coverage losses proved by "inventory computation" or "profit and loss computation." 45 A.L.R.4th 1049.

Subchapter 1 — General Provisions

SECTION.
23-88-101. Valued policy law.
23-88-102. Paying costs of volunteer fire department services.
23-88-103. Rate credits or reduced rates in rural fire protection districts or areas.
23-88-104. Fire protection to be considered in property insurance rating plans.
23-88-105. Notice required prior to expiration of property insurance policy.

Cross References. Manner of payment of claims, § 23-63-107.

Property and Casualty Insurance Policy Simplification Act, § 23-80-301 et seq.

Effective Dates. Identical Acts 1985 (1st Ex. Sess.), Nos. 37 and 38, § 3: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 485 of 1985, which prohibits property and casualty insurers from giving a preferred rate to owners of property located in a fire protection district unless such owners have paid the assessment or dues levied to support the fire protection failed to prescribe penalties for violations and that the Act is not readily enforceable; that this Act is designed to clarify some provisions of Act 485 of 1985 and to prescribe penalties for violations of the Act and to thereby make the Act more enforceable. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 44 Am. Jur. 2d, Ins., § 939 et seq.

Ark. L. Rev. Problems Arising Under Valued Policy Insurance Statutes, 12 Ark. L. Rev. 184.

Insurance — Compromise and Settlement of Total Loss Under the Valued Policy Statute, 18 Ark. L. Rev. 173.

23-88-101. Valued policy law.

(a) In case of a total loss by fire or natural disaster of the property insured, a property insurance policy other than for flood and earthquake insurance shall be held and considered to be a liquidated demand against the company taking the risk for the full amount stated in the policy or the full amount upon which the company charges, collects, or receives a premium.

(b) However, the provisions of this section shall not apply to personal property or detached or appurtenant structures.

History. Acts 1959, No. 148, § 446; A.S.A. 1947, § 66-3901; Acts 1999, No. 1069, § 1.

RESEARCH REFERENCES

ALR. Applicability of Valued-Policy Statutes to Flood, Wind, and Hurricane Damage. 62 A.L.R.6th 227.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Insurance Law, 24 U. Ark. Little Rock L. Rev. 1039.

CASE NOTES

Analysis

In General.
Construction.
Purpose.
Applicability.
Appurtenances.
Concurrent Policies.
Contract Provisions.
Evidence.
Fraud, Misrepresentations, Etc.
Insurable Interest.
Proof of Loss.
Reformation of Policy.
Secured Party.
Separate Actions.
Settlement.
Total Loss.

In General.

Arkansas is a "valued policy" state. Underwriters at Lloyd's v. Pike, 812 F. Supp. 146 (W.D. Ark. 1993).

Construction.

This section is penal in nature, it must be strictly construed. MFA Mut. Ins. Co. v. Pearrow, 249 Ark. 542, 459 S.W.2d 798 (1970).

This section is plain and unambiguous. St. Paul Fire & Marine Ins. Co. v. Griffin Constr. Co., 338 Ark. 289, 993 S.W.2d 485 (1999).

Purpose.

The valued policy law was intended to relieve the insured from the burden of proving the value of his property after its total destruction and to prevent insurance companies from receiving premiums on overvaluations and thereafter repudiating their contracts as soon as it becomes their interest to do so. Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

Applicability.

Former section applied to cases of concurrent insurance and to insurance on special and limited interests in land. Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

Former section applied to farmers' mutual associations. Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

The trial court erred in refusing to direct a verdict on the inapplicability of the valued policy law and in instructing the jury that the valued policy applied because the policy at issue was not a closed policy with an agreed-to value in the event of fire loss but was, instead, open with premiums calculated in part based on periodic reporting. St. Paul Fire & Marine Ins. Co. v. Griffin Constr. Co., 338 Ark. 289, 993 S.W.2d 485 (1999).

Appurtenances.

This section was inapplicable to a house trailer which the owner, a school superintendent, placed on school property with permission of the school district but without a lease of the ground, elevated upon concrete blocks but with wheels not removed, and connected with utilities. Farmers Union Mut. Ins. Co. v. Denniston, 237 Ark. 768, 376 S.W.2d 252 (1964).

Concurrent Policies.

Where insureds' home was concurrently covered by two policies, each issued by a separate insurer, and only one insurer stipulated in its contract against other insurance, that insurer later expressly waiving that right, under this section the measure of the loss when insureds' home was totally destroyed by fire was the aggregate of the concurrent policies in force, with each insurer being liable for the full amount of its policy. Mann v. Charter Oak Fire Ins. Co., 196 F. Supp. 604 (E.D. Ark. 1961), aff'd, 304 F.2d 166 (8th Cir. Ark. 1962).

An insurer against fire was liable for the face value of the policy in the case of a total loss by fire even though the vendee of the premises under a conditional sale with

the insured had, without the knowledge of the insured, carried insurance in a like amount, collected it, and paid the insured the balance due under the contract of sale. Hensley v. Farm Bureau Mut. Ins. Co., 243 Ark. 408, 420 S.W.2d 76 (1967).

Fire insurance policy provision stating that insurer shall not be liable for a greater proportion of loss than amount insured shall bear to the whole insurance covering the property did not entitle insurer to prorate its liability with another insurer. Interstate Fire Ins. Co. v. James, 252 Ark. 638, 480 S.W.2d 341 (1972).

In view of this valued policy section, insured should receive no less than the greater of the face amounts of the two insurance policies in effect at the time of his total loss; each insurer shall pay the proportion of the loss that the amount of the respective policy limits bear to the sum of the insurance coverages provided on the property. Underwriters at Lloyd's v. Pike, 812 F. Supp. 146 (W.D. Ark. 1993).

A single insured may recover the face value of two separate insurance policies when there has been a total loss to the covered real property. St. Paul Reinsurance Co. v. Glover, 72 Ark. App. 134, 34 S.W.3d 760 (2000), aff'd, 345 Ark. 187, 45 S.W.3d 366 (2001).

An insurer is required to pay the full face value of an insurance policy, even where the insured obtained two separate insurance policies for one insurable interest. St. Paul Reinsurance Co. v. Irons, 345 Ark. 187, 45 S.W.3d 366 (2001).

Contract Provisions.

A provision in a fire insurance policy in conflict with former section was void. Liverpool & London & Globe Ins. Co. v. Payton, 128 Ark. 528, 194 S.W. 503 (1917); Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (preceding decisions under prior law).

A stipulation in a valued fire policy limiting the insurance to less than the actual value of the property was void. Farmers' Home Mut. Fire Ass'n v. McAlister, 171 Ark. 574, 285 S.W. 5 (1926) (decision under prior law).

An insurer is liable for the full amount in a policy in case of a total loss, regardless of a provision in the policy that the insurer was not liable for any loss beyond the actual cash value of the policy and in no event should recovery exceed the cost of repairing or replacing the property. Firemen's Ins. Co. v. Little, 189 Ark. 640, 74 S.W.2d 777 (1934) (decision under prior law).

The provision in a fire policy giving the insurer the right to repair, rebuild or replace property within a reasonable time is available only when the building has not been totally destroyed. Camden Fire Ins. Ass'n v. Reynolds, 190 Ark. 390, 79 S.W.2d 54 (1935) (decision under prior law).

Where jury found there was a total loss, the company is liable for the full amount stated in policy and it is unnecessary to consider a "full completed value contribution clause" in policy. Phoenix Assurance Co. v. Loetscher, 215 Ark. 23, 219 S.W.2d 629 (1949) (decision under prior law).

Under a valued policy or the provisions of a valued policy statute, the insured insuring the property at a given valuation, accepted by the insurer at the time of the issuance of the policy as the value of the insured's interest, may recover the full value insured even though he in fact has a limited or qualified interest worth less than the amount of the insurance, and the insurer may not go behind the policy and show the insured's interest is worth less than the amount of the policy. Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

Where a total loss is involved, a clause which diminishes recovery to less than the full amount stated in the policy, is void. Thurston Nat'l Ins. Co. v. Dowling, 259 Ark. 597, 535 S.W.2d 63 (1976).

Evidence.

A policy of insurance on a building is a liquidated demand in case of total loss and evidence of value or determination of value by jury is unnecessary. American Cent. Ins. Co. v. Noe, 75 Ark. 406, 88 S.W. 572 (1905); Farmers Union Mut. Ins. Co. v. Jordan, 200 Ark. 711, 140 S.W.2d 430 (1940) (preceding decisions under prior law).

Fraud, Misrepresentations, Etc.

Former section did not prevent consideration of difference between amount of insurance and real value of property under defense that policy was fraudulently obtained and insured burned the property. Garmon v. Home Ins. Co., 197 Ark. 1102,

126 S.W.2d 621 (1939) (decision under prior law).

In case of total loss of the property insured under a valued policy, the valuation of a policy is conclusive on the parties in absence of a showing of fraud, misrepresentation, mistake or criminal conduct on the part of the insured. Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

Where there was substantial evidence to support the jury's finding that insured made no fraudulent concealment or false representation concerning the value of his property or his interest therein, insured was entitled to recover the face value of the policy upon destruction of the structure by fire. Tedford v. Security State Fire Ins. Co., 224 Ark. 1047, 278 S.W.2d 89 (1955) (decision under prior law).

There was no substantial evidence that the insured fraudulently misrepresented the value of his house and thereby induced the insurer to issue its policy of insurance greatly in excess of the value of the dwelling. Farm Bureau Mut. Ins. Co. v. Parks, 266 Ark. 454, 585 S.W.2d 936 (1979).

Where the buyer of a house that was totally destroyed by a fire lost the amount of the insurance policy which would have been owed to her due to her reliance upon the seller's agent's misrepresentations that the policy was paid up, the buyer was entitled to recover from the seller the full amount which would have been paid under the insurance policy. Blount v. McCurdy, 267 Ark. 989, 593 S.W.2d 468 (Ct. App. 1980).

Insurable Interest.

Plaintiff mortgagor was entitled to the face value of the property in the policy for the total destruction of the home by fire, less the amount paid to the mortgagee to satisfy the loan, because the plaintiff had insurable interest in the insured property. Gravning v. American Druggists' Ins. Co., 259 Ark. 523, 534 S.W.2d 754 (1976).

Where the purchaser of the land conceded that the insured retained ownership of the house involved, insured had an insurable interest in the house. Farm Bureau Mut. Ins. Co. v. Hardage, 266 Ark. 767, 587 S.W.2d 836 (Ct. App. 1979).

Proof of Loss.

The insured's failure to make proof of a total loss of his residence within the time specified for making proof thereof under the policy did not defeat a recovery under the policy where the evidence established that the insured reported his loss promptly. American Ins. Co. v. Rector, 172 Ark. 767, 290 S.W. 367 (1927) (decision under prior law).

Reformation of Policy.

Since former section became part of every policy on real estate, it was not error to refuse to reform a policy by writing therein a clause including such section in express terms. E.O. Barnett Bros. v. Western Assurance Co., 143 Ark. 358, 220 S.W. 465 (1920) (decision under prior law).

Secured Party.

A secured party who qualifies as an insured is entitled to the benefit of the valued policy statute. Sphere Drake Ins. Co. v. Bank of Wilson, 312 Ark. 540, 851 S.W.2d 430 (1993).

Separate Actions.

In a suit to recover on a fire policy covering both his dwelling and the household contents, a homeowner could not subdivide the insuring clauses with respect to the dwelling and household contents as separate causes of action. Lisenby v. Farm Bureau Mut. Ins. Co., 245 Ark. 144, 431 S.W.2d 484 (1968); MFA Mut. Ins. Co. v. Pearrow, 249 Ark. 542, 459 S.W.2d 798 (1970).

Settlement.

Recovery of full amount on policy was proper although adjuster and insured had agreed to settlement for less than that sum where company refused to carry out such agreement denying any liability. National Union Fire Ins. Co. v. Kent, 163 Ark. 7, 259 S.W. 370 (1924) (decision under prior law).

A compromise settlement for less than the face of the policy was void. Coddington v. Safeguard Ins. Co., 237 Ark. 457, 373 S.W.2d 413 (1963).

Total Loss.

There was a total loss where only the walls were left standing and were in such condition that the walls could not be used in restoring building to original condition. Conley v. Fidelity-Phenix Fire Ins. Co., 102 F. Supp. 474 (W.D. Ark. 1952) (decision under prior law).

Cited: McCorkle v. Valley Forge Ins. Co., 11 Ark. App. 41, 665 S.W.2d 898

(1984); Metropolitan Property & Liab. Ins. Co. v. Stancel, 16 Ark. App. 91, 697 S.W.2d 923 (1985); Bennett v. Allstate Ins. Co., 889 F.2d 776 (8th Cir. 1989).

23-88-102. Paying costs of volunteer fire department services.

(a) The amount charged by a volunteer fire department for the cost of its services in responding to a fire on or an emergency call concerning the property of a nonmember within its district shall not exceed an amount equal to the fair market value of the service rendered, except that a claim for services in responding to a fire involving only personal property shall be allowed only for personal property of nonmembers, and the claimed amount shall not exceed five hundred dollars ($500).

(b)(1) When a volunteer fire department responds to a fire occurring or responds to a 911 or other fire emergency call within its district and the property that is the subject of the alarm is owned by a nonmember and insured in case of any damage resulting from a fire, the insurance company insuring the property against loss shall pay to the volunteer fire department the fair market value of its services from the insurance proceeds.

(2) Notice to both the insurance company and to the insured nonmember by the volunteer fire department for its costs of services shall be by certified mail within thirty (30) days after the date of the services rendered.

(c)(1)(A) In the event a nonmember desires to contest an assessment, the nonmember may notify the fire department board of his or her objection to the assessment, and the fire department board shall file a civil suit in the nearest district court within ten (10) days asking for the amount claimed by the fire department.

(B) The district court shall give a hearing on the matter within ten (10) days to determine if the amount claimed is fair compensation for the services rendered.

(2) If the amount of the assessment is contested in district court, the fire department shall immediately notify the insurer of the nonmember's property by certified mail, and the insurer shall upon notification pay into the registry of the court an amount equal to the assessment made by the volunteer fire department for fire services.

(d) The insurer shall not be liable for any amount of money that exceeds the face amount of the policy unless the provisions of the policy provide otherwise.

History. Acts 1987, No. 836, § 2; 1991, No. 984, §§ 1, 2; 1997, No. 1150, § 5; 2007, No. 581, § 2.

Publisher's Notes. Former § 23-88-102, concerning costs of rural volunteer fire department as claim against insurance proceeds, was repealed by Acts 1987, No. 836, § 5. The former section was derived from Acts 1985, No. 1088, § 1; A.S.A. 1947, § 20-950.

Acts 1987, No. 836, § 2, is also codified as § 20-22-902.

23-88-103. Rate credits or reduced rates in rural fire protection districts or areas.

(a)(1) It is found and determined by the General Assembly that:

(A) Rural fire protection districts are beneficial to all property owners in the districts;

(B) Many of the districts are financed wholly or in part by dues or subscription payments made by members of the district;

(C) Some owners of property in the districts fail or refuse to become members of and pay the dues or subscription charges to the district and that under present law insurance companies are permitted to give nonmember property owners the same rate credit as is granted to paying members of the district; and

(D) The giving of equal rate credit to paying and nonpaying property owners in the district is most inequitable and should be corrected.

(2) Therefore, it is the intent and purpose of this section to prohibit insurers from giving nonpaying property owners in rural fire protection districts the rate credit given paying members of the district.

(b) Any property or casualty insurance company which gives any rate credit or any special reduced rates on risks located in a rural fire protection district or in any area protected by a rural fire department, which district or department is wholly or partially funded by assessments, dues, or subscription payments paid by owners of property located in the district or property owners who are members of an association supporting the rural fire department, shall give the rate credit or reduced rate only on risks insured by persons who pay the appropriate assessment, dues, or subscription payments for support of the district or department.

(c)(1)(A) It is unlawful for any insurance agent or company to knowingly write an initial policy of fire insurance coverage on any risk located in a rural fire protection district or in any area protected by a rural fire department at any special reduced rate or with any rate credit based on the location of the risk in such a district or area without having first obtained from the insured or from the fire department providing service in the district or area evidence showing that a current assessment, dues, or subscription payments for the property to be insured have been paid to the fire department serving the area in which the insured property is located.

(B) The evidence required by the insurer may be, but is not limited to, a receipt, cancelled check, or other valid proof of payment provided by the insured.

(2)(A) If any agent is found by the Insurance Commissioner to have violated the provisions of this subsection, the agent shall be liable for an administrative penalty of one hundred dollars ($100) for the first violation and five hundred dollars ($500) for the second violation.

(B) For any subsequent violation, the agent shall be liable for an administrative penalty of five hundred dollars ($500) plus an amount

equal to the difference between the amount of the premium actually charged on the particular policy involved based on the special rate and the amount of premium which would have been charged if the special rate had not been applied.

History. Acts 1985, No. 485, §§ 1, 2; 1985 (1st Ex. Sess.), No. 37, § 1; 1985 (1st Ex. Sess.), No. 38, § 1; A.S.A. 1947, §§ 66-3139, 66-3140; Acts 1997, No. 1178, § 1.

23-88-104. Fire protection to be considered in property insurance rating plans.

When making a rate or rule filing, an insurer shall include an impact statement concerning the filing's effect on fire protection in the affected area unless the insurer utilizes a public protection classification system maintained by a licensed advisory organization.

History. Acts 2003, No. 1749, § 1.

23-88-105. Notice required prior to expiration of property insurance policy.

(a) Except for nonpayment of premium, the insurer shall give either a written notice of nonrenewal or an offer of renewal at least thirty (30) days prior to the expiration of the policy's existing term.

(b) The insurer shall send the insured a written notice and the insurance producer written or electronic notice of the offer of renewal under subsection (a) of this section, indicating the new premium and providing a description of any change in deductible or policy provision in the renewal policy.

History. Acts 2003, No. 1790, § 2.

Subchapter 2 — Antiarson Applications

SECTION.
23-88-201. Purpose.
23-88-202. Definition.
23-88-203. Issuance of policy or renewal of contract prior to July 4, 1983.
23-88-204. Penalty.
23-88-205. Promulgation of form by Insurance Commissioner.
23-88-206. Mandatory use.
23-88-207. Requirement to enter into insurance contract.
23-88-208. Notification of change in information.
23-88-209. Alternative applications.
23-88-210. Termination of policies or contracts.

Cross References. Fire prevention, § 12-13-101 et seq.

23-88-201. Purpose.

The purpose of this subchapter is to promote the public welfare by reducing the loss of life and fire damage to property caused by the crime of arson by requiring insurance companies to secure antiarson applications from applicants for new policies of property insurance containing information to control the incidence of arson fraud.

History. Acts 1983, No. 359, § 1; A.S.A. 1947, § 66-5606.

23-88-202. Definition.

As used in this subchapter, "antiarson application" means any application for insurance covering the peril of fire that includes certain questions which shall be answered by the applicant in addition to the basic information normally supplied to an insurer by an applicant.

History. Acts 1983, No. 359, § 2; A.S.A. 1947, § 66-5607.

23-88-203. Issuance of policy or renewal of contract prior to July 4, 1983.

(a) "Insurance policy" and "contract" shall not be construed to mean a property insurance policy issued prior to July 4, 1983, or contract that is being renewed.

(b) However, assignment of the insurance policy or contract because of the transfer of a major financial interest in the insured real property shall require completion of an antiarson application if otherwise required by this subchapter.

History. Acts 1983, No. 359, § 2; A.S.A. 1947, § 66-5607.

23-88-204. Penalty.

Any insurer willfully violating the provisions of this subchapter shall be subject to a fine imposed by the Insurance Commissioner of not more than five hundred dollars ($500).

History. Acts 1983, No. 359, § 6; A.S.A. 1947, § 66-5611.

23-88-205. Promulgation of form by Insurance Commissioner.

(a) In promulgating the antiarson application form, the Insurance Commissioner shall consider generally recognized two-tier application forms. If the initial first-tier application elicits certain predesignated answers, then the administration of a second-tier supplementary application shall be mandatory.

(b) The two-tier application shall secure the disclosure of information, including, but not limited to:

(1) The name and address of the applicant and any mortgagees and any other parties who have an ownership interest in the property;

(2) The amount of insurance requested and the method of valuation used to establish the amount of insurance;

(3) The dates and selling prices of the property in all real estate transactions involving the property during the last three (3) years;

(4) The applicant's loss history over the last five (5) years with regard to any property in which he or she held an equity interest or a mortgage and when any loss exceeded one thousand dollars ($1,000) in damages;

(5) All taxes unpaid or overdue for one (1) or more years and any mortgage payments overdue by three (3) months or more;

(6) All current violations of fire, safety, health, building, or construction codes on the property to be insured; and

(7) The present occupancy of the structure.

History. Acts 1983, No. 359, § 2; A.S.A. 1947, § 66-5607.

23-88-206. Mandatory use.

(a) The use of the antiarson application shall be mandatory for commercial monoline fire policies, designated occupancies, and designated areas of the state, based upon a finding by the Insurance Commissioner, after a public hearing, that the commercial monoline fire policies, the designated occupancies, and the areas of the state have an abnormally high incidence of arson.

(b) However, if the commissioner desires to extend the application of this subchapter to other than commercial monoline fire policies, he or she must first find, after public hearing, that the properties insured through those other types of policies are especially prone to arson.

(c) Designation of any area of the state under this subchapter shall not be deemed a valid reason for refusal to write, for termination, or for nonrenewal of any policy or contract of insurance.

History. Acts 1983, No. 359, § 2; A.S.A. 1947, § 66-5607.

23-88-207. Requirement to enter into insurance contract.

(a) No insurer may enter into a contract to insure any building, except one (1) to four (4) family owner-occupied dwellings, against the peril of fire to be issued after July 4, 1983, unless the insurer first receives an antiarson application signed and affirmed by the insured, if required by the Insurance Commissioner in accordance with the provisions of this subchapter.

(b)(1) Any antiarson application required by this subchapter shall be deemed a material part of the insurance policy to which the application pertains.

(2) A material misrepresentation shall be deemed grounds to rescind the insurance policy.

History. Acts 1983, No. 359, § 3; A.S.A. 1947, § 66-5608.

23-88-208. Notification of change in information.

(a) Policyholders shall notify their insurer of any change in the information contained in the antiarson application, within a period of time to be specified.

(b) A material failure to notify or a material misrepresentation in the notification shall be deemed grounds to rescind the insurance policy.

History. Acts 1983, No. 359, § 3; A.S.A. 1947, § 66-5608.

23-88-209. Alternative applications.

(a) The Insurance Commissioner may not mandate the use of any applications other than the antiarson application as defined in § 23-88-202. However, the commissioner may mandate alternative antiarson applications pursuant to a finding after a public hearing that:

(1) There exist certain types of policies, certain classes of property, and certain geographic areas of the state which have abnormally high incidences of arson;

(2) The antiarson application described in §§ 23-88-202, 23-88-203, 23-88-205, and 23-88-206 was implemented as respects such types of insurance policies, such classes of property, and areas of the state pursuant to the provisions of this subchapter; and

(3) The use of the antiarson application pursuant to this subchapter failed to substantially decrease the arson problems for those types of insurance policies, classes of property, and geographic areas.

(b) Alternative antiarson applications may be mandated only for the types of insurance policies, types of occupancies, and the areas of the state which would be permissible subjects for the antiarson application authorized by this subchapter.

History. Acts 1983, No. 359, § 4; A.S.A. 1947, § 66-5609.

CASE NOTES

Cited: Kanning v. Allstate Ins. Cos., 67 Ark. App. 135, 992 S.W.2d 831 (1999).

23-88-210. Termination of policies or contracts.

(a) Despite any other provision of law which limits the time for termination of insurance policies to the contrary, an insurer may terminate any policy or contract of insurance when the antiarson application or any alternative antiarson application, as provided in § 23-88-209, is required at any time within ninety (90) days from the insurer's acceptance of the applications.

(b) The notice of cancellation to the insured shall contain the specific reasons for the termination of the policy, provided that the reasons are not otherwise prohibited by law.

History. Acts 1983, No. 359, § 5; A.S.A. 1947, § 66-5610.

Subchapter 3 — Rural Risk Underwriting

SECTION.
23-88-301. Legislative intent.
23-88-302. Definitions.
23-88-303. Arkansas Rural Risk Underwriting Association — Plan of property insurance.
23-88-304. Governing board.
23-88-305. Promulgation and approval of plan — Hearing.
23-88-306. Provisions of plan.
23-88-307. Liability of insurer.
23-88-308. Commissioner's powers and duties.
23-88-309. Appeals.

Effective Dates. Acts 1985 (1st Ex. Sess.), No. 25, § 10: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered by this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the public peace, health and welfare shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 1326, § 2: Apr. 14, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that fire is one of the leading causes of loss in the state, and that funding of fire departments is essential to combat these losses. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 2004, § 6: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to regulation of farmers' mutual aid associations or companies are inadequate for the protection of the public and that this act is immediately necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 588, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that fire is one (1) of the leading causes of loss in the state; that funding is essential to combat these losses; and that the annual assessment on rural risk underwriters which provided reimbursement for the mailing of fire department renewal subscription notices expired on December 31, 2006. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is

vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-88-301. Legislative intent.

It is declared by the General Assembly of the State of Arkansas that adequate insurance upon property in the rural areas is necessary to the economic welfare of the state and that while the need for such insurance is increasing, the market for it is not adequate and may become less adequate in the future. It is the purpose of this subchapter to provide a mandatory plan to assure an adequate market for property insurance on insurable risks in the rural areas of Arkansas.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 1; A.S.A. 1947, § 66-6101.

23-88-302. Definitions.

As used in this subchapter:

(1) "Association" means the Arkansas Rural Risk Underwriting Association established pursuant to the provisions of this subchapter;

(2) "Commissioner" means the Insurance Commissioner;

(3) "Insurer" means any person who:

(A) Writes any kind of insurance to which this subchapter applies under § 23-88-303, including the exchange of reciprocal or interinsurance contracts; and

(B) Is licensed to transact insurance in this state;

(4)(A) "Net direct written premiums" means the gross amount of premiums received from policies of insurance issued in this state to which this subchapter applies, less return premiums and dividends paid or credited to policyholders.

(B) "Net direct written premiums" does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deduction for premiums for indemnity reinsurance ceded to other insurers; and

(5) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 2; A.S.A. 1947, § 66-6102.

23-88-303. Arkansas Rural Risk Underwriting Association — Plan of property insurance.

(a)(1) All insurers licensed to transact property insurance, as defined in § 23-62-104, shall become members of the Arkansas Rural Risk Underwriting Association.

(2) For the purposes of this section, farmers' mutual aid associations or companies are insurers and are subject to the assessments and other requirements imposed on insurers under this section.

(b) This association or company shall provide a plan of property insurance to insurable rural risk applicants. Rural risk applicants are those applicants seeking insurance on risks located in geographic areas to be determined "rural areas" by the governing board, subject to the approval of the Insurance Commissioner.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 3; A.S.A. 1947, § 66-6103; Acts 2005, No. 2004, § 5.

23-88-304. Governing board.

For the plan or plans there shall be a governing board of seven (7) members to be appointed by the Insurance Commissioner, which shall meet at least annually to review and prescribe operating rules and which shall consist of the following members:

(1) Four (4) members shall be representatives of foreign insurance companies, with those members to be appointed for terms of three (3) years; and

(2) Three (3) members shall be representatives of domestic insurance companies, with those members to be appointed for terms of three (3) years.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 3; A.S.A. 1947, § 66-6103.

23-88-305. Promulgation and approval of plan — Hearing.

(a) Within sixty (60) days following June 26, 1985, the governing board shall submit the plan to the Insurance Commissioner for his or her approval.

(b) When the plan has been approved by the commissioner, all insurance companies authorized to transact the kinds of insurance set forth in § 23-88-303 shall subscribe to and participate in the plan.

(c) If no plan meeting the purpose set forth in § 23-88-301 is submitted to the commissioner within the period of time specified, the commissioner shall prepare and promulgate a plan meeting those requirements. The commissioner may designate one (1) or more insurers or other agencies to assist him or her in the preparation, operation, and promulgation of a plan.

(d) Notwithstanding the provisions contained in this section, no application shall be submitted to or accepted by the plan until the commissioner has determined, after a hearing, that a need for the implementation of the plan exists.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 4; A.S.A. 1947, § 66-6104.

23-88-306. Provisions of plan.

(a)(1) The plan shall provide for the efficient, economical, and fair administration of the Arkansas Rural Risk Underwriting Association and shall be consistent with the purposes of this subchapter. Therefore, the plan shall include provisions for the equitable apportionment among the association's members of the expenses, profits, and losses arising from the association's rural risk writings.

(2) A member's participation in the association's expenses, profits, and losses shall be in the proportion that the net direct property insurance premiums of each member written in this state during the preceding calendar year bear to the aggregate net direct property insurance premiums of all members of the association written in this state during the preceding calendar year.

(3)(A) The governing board shall be empowered to make assessments as may be necessary to provide funds needed to make payment of all loss claims and expenses of the association.

(B) Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year.

(C) If the maximum assessment in any calendar year results in a deficiency in premiums to losses, assessments may be made in the next and any successive calendar year.

(4) Further, the plan shall provide for an annual credit to members for basic property insurance voluntarily written on rural risks. This dollar credit shall relieve a member wholly or partially from participation in the association's expenses and losses.

(b) The plan shall also establish reasonable underwriting standards, subject to the approval of the Insurance Commissioner. Any applicant that meets these standards will be an insurable risk and entitled to property insurance through the association.

(c) The plan shall include deductibles, rules for classification of risks, rate modifications consistent with the objective of providing and maintaining funds sufficient to pay rural risk losses and expenses, and the limits of coverage available.

(d) The commissioner shall assess all members an amount not to exceed two hundred dollars ($200) annually, if needed, for the expense of mailing fire department renewal subscription notices.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 5; A.S.A. 1947, § 66-6105; Acts 2003, No. 1326, § 1; 2007, No. 588, § 1.

A.C.R.C. Notes. As enacted by the legislature, Acts 2003, No. 1326, § 1, included the following language: "(2) This subsection expires on December 31, 2006."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Fire Department Renewal Subscription Expenses, 26 U.

Ark. Little Rock L. Rev. 484.

Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Home Loan Protection Act, 26 U. Ark. Little Rock L. Rev. 484.

23-88-307. Liability of insurer.

It being the intention of this subchapter to provide an adequate market for the property insurance coverages defined in this subchapter, no insurer participating in this plan shall be liable for any damages which may result from any extra-contractual liability or for any act or omission of any kind, the insurer's liability being limited solely to the property insurance coverages provided for in this subchapter.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 7; A.S.A. 1947, § 66-6107.

23-88-308. Commissioner's powers and duties.

(a) In addition to approving the plan of operation, the Insurance Commissioner shall have the authority to promulgate rules and regulations necessary to effect the purpose of this subchapter.

(b) Further, after review of annual statements, other reports, and any other statistics which the commissioner deems necessary, the commissioner shall certify to the plan the aggregate net direct property insurance premiums written on property in this state by all members. This information will be used to determine a member's participation.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 8; A.S.A. 1947, § 66-6108.

23-88-309. Appeals.

Any applicant for a policy, any persons insured under the plan, and any agency or insurer affected by the plan may appeal to the Insurance Commissioner any ruling or decision of the governing board or the authorized representative designated to operate a plan.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 6; A.S.A. 1947, § 66-6106.

Subchapter 4 — Fire Loss Reporting Act of 2003

SECTION.
23-88-401. Title.
23-88-402. Annual information concerning fire-related losses.
23-88-403. Proprietary information.
23-88-404. Notice regarding fire protection.
23-88-405. Rules and regulations.

Effective Dates. Acts 2003, No 1345, § 6: Apr. 14, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkan-

sas that fire is the leading cause of insurance loss in the state; that the number of deaths due to fire are a major economic burden to the citizens and counties of this state; and that specific county by county fire loss data will help the counties better evaluate the preparedness and effectiveness of their fire fighting capabilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-88-401. Title.

This subchapter may be referred to as the "Fire Loss Reporting Act of 2003".

History. Acts 2003, No. 1345, § 1.

23-88-402. Annual information concerning fire-related losses.

(a) Any insurance company licensed to write property insurance in Arkansas shall file annually with the Insurance Commissioner a statement of its losses related to fire on a county-by-county basis in a form and manner prescribed by the commissioner.

(b) The commissioner shall annually compile the loss information under subsection (a) of this section in an aggregate form by county for dissemination to the General Assembly, state agencies, counties, and the public.

History. Acts 2003, No. 1345, § 2.

23-88-403. Proprietary information.

Information filed under this subchapter by an insurance company with the Insurance Commissioner shall be treated as proprietary information and is exempt from public disclosure except in an aggregate form.

History. Acts 2003, No. 1345, § 3.

23-88-404. Notice regarding fire protection.

(a) In an effort to educate policyholders of the benefits of fire protection, every insurance company shall include in the premium notice to policyholders the following notice:

"IMPORTANT NOTICE REGARDING FIRE PROTECTION

Did you know that the firefighting ability of your Fire Department helps lower your insurance rates? It's true! The better your firefighters are equipped and trained, the better their access to water for fighting fires, the length of time it takes for them to arrive at a

fire, are a few of the many factors that have an impact on your property insurance rates. Help your firefighters help you! They need your support, financial and otherwise. Adequate funding is important to improving the protection that may translate to lower premiums!"

(b) The notice prescribed by subsection (a) of this section shall be in 12-point type or larger.

History. Acts 2003, No. 1345, § 4.

23-88-405. Rules and regulations.

The Insurance Commissioner may adopt reasonable rules and regulations to enforce the provisions of this subchapter.

History. Acts 2003, No. 1345, § 5.

Subchapter 5 — Portable Electronics Insurance

SECTION.
23-88-501. Definitions.
23-88-502. Licensure of vendors.
23-88-503. Requirements for sale of portable electronics insurance.
23-88-504. Authority of vendors to sell or offer portable electronics insurance.
23-88-505. Suspension or revocation of license.
23-88-506. Termination of portable electronics insurance.
23-88-507. Application for license and fees.

23-88-501. Definitions.

As used in this subchapter:

(1) "Customer" means a person who purchases portable electronics or services;

(2) "Enrolled customer" means a customer who elects to have coverage under a portable electronics insurance policy issued by a vendor;

(3) "Location" means, as directed to residents of the State of Arkansas:

(A) A physical location in this state;

(B) A website; or

(C) A call center site or similar location;

(4) "Portable electronics" means electronic devices that are portable in nature, including the accessories and services related to the use of the electronic device;

(5)(A) "Portable electronics insurance" means insurance for the repair or replacement of portable electronics that includes the following causes of loss:

(i) Loss;

(ii) Theft; and

(iii) Inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss.

(B) "Portable electronics insurance" does not include a service contract governed by the Service Contracts Act, § 4-114-101 et seq.;

(6) "Portable electronics transaction" means:

(A) The sale or lease to a customer of portable electronics by a vendor; or

(B) The sale of a service related to the use of portable electronics to a customer by a vendor;

(7) "Supervising entity" means a business entity that is an insurer or insurance producer licensed under the insurance laws of this state; and

(8) "Vendor" means a person that engages in the business of portable electronics transactions.

History. Acts 2011, No. 1018, § 1.

23-88-502. Licensure of vendors.

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a portable electronics insurance policy.

(b) A limited lines license issued under this subchapter shall authorize an employee or authorized representative of the licensee to sell or offer coverage under a policy of portable electronics insurance to a customer at locations the vendor engages in the business of portable electronics transactions.

(c) A supervising entity shall:

(1) Maintain a registry of vendor locations that are authorized to offer coverage for portable electronics in this state; and

(2) Produce the registry for inspection and examination during its regular business hours upon receipt of a ten-day notice from the Insurance Commissioner.

(d) A license issued under this subchapter authorizes the licensee and its employees or authorized representatives to engage in the activities authorized by this subchapter.

History. Acts 2011, No. 1018, § 1; 2013, No. 340, § 1.

Amendments. The 2013 amendment rewrote (c).

23-88-503. Requirements for sale of portable electronics insurance.

(a) At a location where portable electronics insurance coverage is offered to customers, a prospective customer shall receive written disclosure that states:

(1) Portable electronics insurance may provide duplication of coverage provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) The enrollment by the customer for portable electronics insurance coverage is not required in order to purchase or lease portable electronics devices or services;

(3) The material terms of the insurance coverage, to include:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of an applicable deductible;

(D) An explanation of the individual that is responsible for the applicable deductible;

(E) Benefits of the coverage; and

(F) Key terms and conditions of coverage, including without limitation whether or not portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(4) The process for filing a claim, including:

(A) A description of how to return portable electronics; and

(B) The maximum fee if the customer fails to comply with requirements for returning the portable electronics; and

(5)(A) An enrolled customer may cancel a portable electronics insurance policy at any time.

(B) The person paying the premium shall receive a refund of the unearned premium.

(b) A vendor that has been issued a group or master commercial inland marine policy may offer portable electronics insurance on a month-to-month basis or other periodic basis for its enrolled customers.

(c) Eligibility and underwriting standards for customers to enroll in coverage are to be established by the supervising entity for a portable electronics insurance policy before offering the portable electronics insurance to a customer.

History. Acts 2011, No. 1018, § 1.

23-88-504. Authority of vendors to sell or offer portable electronics insurance.

(a)(1) Employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers without a license as an insurance producer if:

(A) The vendor obtains a limited lines license; and

(B)(i) The insurer issuing the portable electronics insurance supervises or appoints a supervising entity to supervise the insurance coverage policies, including development of a training program for vendors.

(ii) The training program for vendors shall:

(a) Be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance; and

(b) Provide basic instruction about the portable electronics insurance offered to customers and the written disclosures required under § 23-88-503.

(iii)*(a)* The training program for vendors may be provided in an electronic format.

(b) If the training program for vendors is provided in an electronic format, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance

coverage that is supervised by licensed employees of the supervising entity.

(2) An employee or authorized representative of a vendor shall not:

(A) Advertise, represent, or otherwise hold himself or herself out as a licensed nonlimited lines insurance producer; or

(B)(i) Be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage.

(ii) An employee or authorized representative of a vendor may receive compensation for activities under a limited lines license that is incidental to his or her overall compensation.

(b)(1)(A) Charges for portable electronics insurance may be billed and collected by the vendor.

(B) A charge that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be itemized separately on the enrolled customer's bill.

(C) If portable electronics insurance is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance is included.

(2)(A) Vendors billing and collecting charges for portable electronics insurance shall not be required to maintain the funds in a segregated account if the vendor:

(i) Is authorized by the insurer to hold the funds in an alternative manner; and

(ii) Remits the amount to the supervising entity within sixty (60) days of receipt by the vendor.

(B) The funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor acting in a fiduciary capacity for the benefit of the insurer.

(C) Vendors may receive compensation from the insurer for billing and collection services authorized under this section.

History. Acts 2011, No. 1018, § 1.

23-88-505. Suspension or revocation of license.

If a vendor, its employee, or its authorized representative violates a provision of this subchapter, the Insurance Commissioner may after notice and a hearing impose on the vendor:

(1) Fines not to exceed five hundred dollars ($500) per violation or five thousand dollars ($5,000) in the aggregate; and

(2) Other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this subchapter, including without limitation:

(A) Suspending the privilege of transacting portable electronics insurance at specific business locations where violations have occurred; and

(B) Suspending or revoking the ability of individual employees or authorized representatives of the vendor to act under a license issued under this subchapter.

History. Acts 2011, No. 1018, § 1.

23-88-506. Termination of portable electronics insurance.

(a) Notwithstanding any other law:

(1) An insurer may terminate or otherwise change the terms and conditions of a portable electronics insurance policy only if the policyholder and enrolled customer are provided with at least thirty (30) days' notice; and

(2) If the insurer changes the terms and conditions of a portable electronics insurance policy, the insurer shall provide:

(A) The vendor with a revised policy or endorsement; and

(B) Each enrolled customer with:

(i) A revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred; and

(ii) A summary of material changes to the portable electronics insurance policy coverage.

(b) Notwithstanding subsection (a) of this section, an insurer may terminate an enrolled customer's coverage under a portable electronics insurance policy on fifteen (15) days' notice if the insurer discovers that fraud or material misrepresentation was used in obtaining coverage or in the presentation of a claim under the portable electronics insurance policy.

(c) Notwithstanding subsection (a) of this section, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(1) For nonpayment of premium;

(2) If an enrolled customer ceases to have an active service with the vendor; or

(3)(A) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit.

(B) If notice to the enrolled customer is not timely sent by the insurer, enrollment and coverage shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(d)(1) If a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to the enrolled customer to advise the enrolled customer of the termination of the portable electronics insurance coverage and the effective date of termination.

(2) The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days before the termination by the policyholder.

(e)(1) When notice is required under this subchapter, the notice shall be in writing and may be mailed or delivered by registered mail to:

(A) The vendor at the vendor's last known mailing address; and

(B) The vendor's affected enrolled customers' last known mailing addresses on file with the insurer.

(2)(A) If notice is completed through the mail, the person providing notice shall maintain proof of mailing.

(B) An insurer may comply with a notice requirement under this subchapter by providing electronic notice to a vendor or its affected enrolled customers through electronic means.

(C) If notice is completed through electronic means, the insurer shall maintain proof that the notice was sent.

History. Acts 2011, No. 1018, § 1; 2013, No. 340, § 2.

Amendments. The 2013 amendment rewrote (a)(2).

23-88-507. Application for license and fees.

(a)(1) An application for licensure under this subchapter shall be made to and filed with the Insurance Commissioner on forms prescribed and furnished by the State Insurance Department.

(2) The application for licensure under this subchapter shall:

(A)(i) Provide the name, residence address, and other information required by the commissioner for an employee or authorized representative of the vendor designated by the applicant as the person responsible for the vendor's compliance with the requirements of this subchapter.

(ii) If the vendor derives more than fifty percent (50%) of its revenue from the sale of portable electronics insurance, the information required in subdivision (a)(2)(A)(i) of this section shall be provided for all officers, directors, and shareholders of record that have beneficial ownership of ten percent (10%) or more of any class of securities registered under the federal securities law;

(B)(i) Appoint the commissioner as authorized to receive service on behalf of the applicant for any legal process issued against it in a civil action or proceeding in this state brought in connection with portable electronics insurance coverage and agree that process of the commissioner shall be valid and binding against the applicant.

(ii) The appointment under subdivision (a)(2)(B)(i) of this section shall:

(a) Be irrevocable;

(b) Bind the applicant and any successor in interest as to the assets or liabilities of the applicant; and

(c) Remain in effect as long as the applicant's licensure remains in force in this state; and

(C) Provide the location of the applicant's principal place of business or home office.

(b) Applications for licensure under this subchapter shall be submitted within ninety (90) days of the application forms' being made available by the commissioner.

(c) An initial license issued under this subchapter shall be valid for a period of twenty-four (24) months.

(d)(1) A vendor of portable electronics applying for a limited lines license under this subchapter shall pay to the commissioner:

(A) A nonrefundable application and license fee of one thousand dollars ($1,000); and

(B) A renewal license fee of five hundred dollars ($500).

(2) However, a vendor that is engaged in portable electronics transactions at ten (10) or fewer locations in the state applying for a limited lines license under this subchapter shall pay to the commissioner:

(A) A nonrefundable application and license fee not to exceed one hundred dollars ($100); and

(B) A renewal license fee not to exceed one hundred dollars ($100).

History. Acts 2011, No. 1018, § 1.

CHAPTER 89

CASUALTY INSURANCE

SUBCHAPTER.

1. General Provisions.
2. Automobile Liability Insurance Generally.
3. Automobile Liability Insurance — Cancellation and Nonrenewal.
4. Uninsured Motorist Coverage.
5. Amusement Ride and Amusement Attraction Safety Insurance Act.

RESEARCH REFERENCES

ALR. Liability insurance: failure or refusal of insured to attend trial or to testify as breach of co-operation clause. 9 A.L.R.4th 218.

No-fault insurance: validity and construction of plans providing for reduction of benefits otherwise payable by amounts receivable from independent collateral sources. 10 A.L.R.4th 996.

Liability insurer's negligence or bad faith in conducting or failing to conduct defense as ground of liability to insured. 20 A.L.R.4th 23.

Unlicensed automobile owned by insured as "owned automobile" within language of automobile liability insurance. 21 A.L.R.4th 918.

Change of named beneficiary of accident insurance policy by will, effectiveness of. 25 A.L.R.4th 1164.

Insurance provision covering or excluding watercraft. 26 A.L.R.4th 967.

Provision of liability insurance policy expressly excluding injuries intended or expected by insured. 31 A.L.R.4th 957.

Rules requiring liability insurer to show prejudice to escape liability because of insured's failure or delay in giving notice of accident or claim, or in forwarding suit papers. 32 A.L.R.4th 141.

Clause of product liability insurance policy excepting from coverage cost of product recall or withdrawal of product from market. 32 A.L.R.4th 630.

Coverage and exclusions of liability or indemnity policy on physicians, surgeons, and other healers. 33 A.L.R.4th 14.

Intoxication or other mental incapacity avoiding application of clause in liability insurance policy specifically exempting coverage of injury or damage caused intentionally by or at direction of insured. 33 A.L.R.4th 983.

No-fault insurance: apportionment of benefits between insurers providing coverage to same insured under policies covering different vehicles. 34 A.L.R.4th 374.

Right of insurer issuing "uninsured mo-

torist" coverage to intervene in action by insured against uninsured motorist. 35 A.L.R.4th 757.

"Occurrence" and "discovery" or "claims made" liability policies, event as occurring within period of coverage of. 37 A.L.R.4th 382.

Fire, theft, and collision insurance on stolen motor vehicles. 38 A.L.R.4th 538.

Construction and application of pollution exclusion clause in liability insurance policy. 39 A.L.R.4th 1047.

No-fault insurer: necessity and permissibility of naming as defendant where insured automobile owner or operator is not liable for economic losses under no-fault insurance law. 40 A.L.R.4th 858.

Cancellation of compulsory or "financial responsibility" automobile insurance. 44 A.L.R.4th 13.

Self-insurance against liability as other insurance within meaning of liability insurance policy. 46 A.L.R.4th 707.

Who is "employed or engaged in the automobile business" within the exclusionary clause of liability policy. 55 A.L.R.4th 261.

What constitutes use of vehicle "in the automobile business" within exclusionary clause of liability policy. 56 A.L.R.4th 300.

What constitutes "entering or alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage. 59 A.L.R.4th 149.

Automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage. 61 A.L.R.4th 1130.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to a specified amount per accident or occurrence. 64 A.L.R.4th 668.

What constitutes theft within automobile theft insurance policy — Modern cases. 67 A.L.R.4th 82.

Ark. L. Rev. Procedure — Discovery — Amount of Adversary's Insurance, 20 Ark. L. Rev. 376.

U. Ark. Little Rock L.J. Arkansas Law Survey, Stewart, Insurance, 8 U. Ark. Little Rock L.J. 183.

Subchapter 1 — General Provisions

SECTION.
23-89-101. Subrogation of injured person to right of insured.

SECTION.
23-89-102. Insolvency of insured does not release liability insurer.

Cross References. Manner of payment of claims, § 23-63-107.

Property and Casualty Insurance Policy Simplification Act, § 23-80-301 et seq.

23-89-101. Subrogation of injured person to right of insured.

(a) Any policy of insurance issued or delivered in this state indemnifying any person against any actual money loss sustained by the person for damages inflicted upon the property or person of another shall contain a provision that the injured person, or his or her personal representative, shall be subrogated to the right of the insured named in the policy.

(b) The policy shall also contain a provision that the injured person, or his or her personal representative, whether the provision is actually inserted in the policy or not, may maintain a direct cause of action against the insurer issuing the policy for the amount of the judgment

rendered against the insured, not exceeding the amount of the policy, provided the judgment remains unsatisfied at the expiration of thirty (30) days from the serving of notice of entry of judgment upon the attorney for the insured or upon the insured or upon the insurer.

History. Acts 1959, No. 148, § 447; A.S.A. 1947, § 66-4001.

RESEARCH REFERENCES

ALR. Conduct or inaction by insurer constituting waiver of, or creating estoppel to assert, right of subrogation. 125 A.L.R.5th 1.

Am. Jur. 7 Am. Jur. 2d, Auto Ins., §§ 53, 190-204.

U. Ark. Little Rock L.J. Note, Insurance — Subrogation — A Subrogation Clause in a Health Insurance Policy is Enforceable Even Though the Insured Has Not Been Made Whole. Higginbotham v. Arkansas Blue Cross & Blue Shield, 312 Ark. 199, 849 S.W.2d 464 (1993), 16 U. Ark. Little Rock L.J. 475.

CASE NOTES

Analysis

Construction.
Purpose.
Applicability.
Conditions Precedent to Recovery.
Conditions Precedent to Suit.
Direct Cause of Action.
Effect of Judgment.
Garnishment.
Insured Party.
Penalty and Attorney's Fees.
Protected Parties.
Rights of Injured Party.
Venue.

Construction.

The wording "... unsatisfied at the expiration of thirty (30) days from the serving of notice of entry of judgment ...," means 30 days from the entry of final judgment as described by A.R.A.P., Rule 4. Simmons First Nat'l Bank v. Liberty Mut. Ins. Co., 282 Ark. 194, 667 S.W.2d 648 (1984).

Purpose.

The manifest purpose of the direct action statute is to protect the rights of the injured plaintiff and not the rights of the insurance company or the insured. Southern Farm Bureau Cas. Ins. Co. v. Robinson, 236 Ark. 268, 365 S.W.2d 454 (1963) (decision under prior law).

Applicability.

Before this section becomes applicable, the injured person must have recovered a judgment against the insured tortfeasor which remains unsatisfied for thirty days. Jarboe v. Shelter Ins. Co., 317 Ark. 395, 877 S.W.2d 930 (1994).

Conditions Precedent to Recovery.

Before this section is applicable, the injured person must have recovered a judgment against the wrongdoer and such judgment must have remained unsatisfied at the expiration of 30 days from the serving of the notice of entry of judgment upon the attorney for the insured or upon the insured or upon the insurer. Swan v. Estate of Monette ex rel. Monette, 265 F. Supp. 362 (W.D. Ark. 1967), aff'd, 400 F.2d 274 (8th Cir. Ark. 1968).

This section does not require the issuance of a writ of execution and its return nulla bona as a condition precedent to injured party's direct action against the liability insurer. Blevins v. Commercial Std. Ins. Cos., 544 F.2d 967 (8th Cir. 1976).

Conditions Precedent to Suit.

Where injured person has right to sue insurer conditioned upon unsatisfied judgment against insured, the obtaining of the judgment and the unsuccessful efforts to collect it are conditions precedent to cause of action. Spann v. Commercial Std. Ins. Co., 82 F.2d 593 (8th Cir. 1936) (decision under prior law).

Direct Cause of Action.

Where a party injured in an automobile accident sought a judgment declaring in-

surance coverage of the tortfeasor, the action was not a direct action against the insurance company and the circuit court was not prohibited from hearing the complaint by § 23-79-210 or this section. National Sec. Fire & Cas. Co. v. Poskey, 309 Ark. 206, 828 S.W.2d 836 (1992).

Where plaintiff farmers obtained a judgment against manufacturer for damages to their crop and then sued defendant, the manufacturer's commercial general liability insurer, for indemnity, although this section did not create an additional cause of action for a claimant where the underlying insurance policy was issued and delivered outside Arkansas, the statute did not purport to preclude a claimant from relying upon a right of action created by an express provision in an insurance contract, and the policy provided that a person or organization could sue the insurer to recover on a final judgment against an insured obtained after an actual trial; thus, judgment against the insurer was upheld. Ferrell v. West Bend Mut. Ins. Co., 393 F.3d 786 (8th Cir. 2005).

Effect of Judgment.

In the absence of proof that injured party's judgment against the insured was procured by fraud, collusion, or bad faith, the liability insurer was bound by the judgment under res judicata principles in injured party's direct action against the insurer. Blevins v. Commercial Std. Ins. Cos., 544 F.2d 967 (8th Cir. 1976).

Garnishment.

Garnishment does not lie against a liability insurance corporation after a judgment has been rendered against the insured; but the insured may maintain a direct action against the liability insurance carrier. Wood v. Bennett, 176 F. Supp. 205 (W.D. Ark. 1959) (decision under prior law).

Insured Party.

Where the automobile driven by minor at time of accident had been loaned by the owner to minor's parents, the court's finding that the minor was an insured within the terms and coverage of insurer's liability policy to owner was not clearly erroneous despite owner's testimony that he had expressly restricted the use of the loaned automobile to adults. Blevins v. Commercial Std. Ins. Cos., 544 F.2d 967 (8th Cir. 1976).

Penalty and Attorney's Fees.

A party who prevails under this section may, in some circumstances, be entitled to the statutory penalty and attorney's fee under § 23-79-208. Simmons First Nat'l Bank v. Liberty Mut. Ins. Co., 282 Ark. 194, 667 S.W.2d 648 (1984).

Protected Parties.

Servant held to constitute an insured under the policy since he was driving truck with implied permission of the insured. Traders & Gen. Ins. Co. v. Powell, 177 F.2d 660 (8th Cir. 1949) (decision under prior law).

The defendant insurance company was entitled to a summary judgment in an action for injuries received by the plaintiff-employee where the liability policy excluded coverage of employees of the insured with respect to injuries to other employees injured in the course of such employment. Bryan v. Aetna Cas. & Sur. Co., 381 F.2d 872 (8th Cir. 1967).

Suit by plaintiff insurer as subrogee of insured against primary insurers for their share of settlement was not prevented by this section since the action was not by or to enforce the rights of the injured person. Trinity Universal Ins. Co. v. State Farm Mut. Auto Ins. Co., 246 Ark. 1021, 441 S.W.2d 95 (1969).

A creditor of an injured person who had obtained a judgment against the insured may not maintain an action against the insurer for the unpaid portion of the judgment even if the insurer had negligently or in bad faith refused to settle the claim against the insured for an amount within the limits of the policy. Greer v. Mid-West Nat'l Fire & Cas. Ins. Co., 305 F. Supp. 352 (E.D. Ark. 1969), aff'd, 434 F.2d 215 (8th Cir. 1970).

Rights of Injured Party.

The rights of the injured person against an insurer under an automobile public liability and property damage policy cannot be destroyed by any actions of the insured and insurer attempting subsequently to cancel, release, or compromise notwithstanding that the third party's right to sue the insurer is conditioned on an unsatisfied judgment against the insured. Spann v. Commercial Std. Ins. Co.,

82 F.2d 593 (8th Cir. 1936) (decision under prior law).

Rights of injured person in regard to insurance rise no higher than those of the insured, but there is no obligation to give notice. Maryland Cas. Co. v. Waggoner, 193 Ark. 550, 101 S.W.2d 451 (1937) (decision under prior law).

The judgment creditor of a tort judgment against the holder of a public liability policy cannot, after the payment by the insurer of the face of the policy toward satisfaction of the judgment, sue the insurer for the excess on the ground that the insurer is liable to the policyholder for such excess because of bad faith refusal before the trial to settle the plaintiff's claim within the limits of the policy. Greer v. Mid-West Nat'l Fire & Cas. Ins. Co., 434 F.2d 215 (8th Cir. 1970).

In action against insurers of the owner of the vehicle involved in a rear-end collision, the injured person stands in the shoes of the insured regarding the defense of failing to cooperate. Southern Farm Bureau Cas. Ins. Co. v. Jackson, 262 Ark. 152, 555 S.W.2d 4 (1977).

Venue.

This section is a subrogation statute and the action permitted by it is contractual in nature and not for personal injury; thus, venue is determined not by § 16-60-112 but by § 16-60-116 or § 23-79-204. Equity Fire & Cas. Ins. Co. v. Coleman, 326 Ark. 100, 928 S.W.2d 796 (1996).

Cited: Aufderhar v. American Employers Ins. Co., 331 F.2d 681 (8th Cir. 1964); Great Am. Ins. Co. v. Ratliff, 242 F. Supp. 983 (E.D. Ark. 1965); Taylor v. Federal Kemper Ins. Co., 534 F. Supp. 196 (W.D. Ark. 1982); Williams v. State Farm Mut. Auto. Ins. Co., 737 F.2d 741 (8th Cir. 1984); Daves v. Hartford Accident & Indem. Co., 302 Ark. 242, 788 S.W.2d 733 (1990).

23-89-102. Insolvency of insured does not release liability insurer.

(a) No policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable or against loss or damage to property caused by horses or by any vehicles drawn, propelled, or operated by any motive power and for which loss or damage the person insured is liable shall be issued or delivered to any person in this state unless the policy contains a provision that the insolvency or bankruptcy of the person insured shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of the policy.

(b) The policy must also state that in case execution against the insured is returned unsatisfied because of the insolvency or bankruptcy, in an action brought by the injured or his or her personal representative in case death results from the accident, then an action may be maintained by the injured person or his or her personal representative against the insurer under the terms of the policy for the amount of the judgment in the action not exceeding the amount of the policy.

History. Acts 1959, No. 148, § 448; A.S.A. 1947, § 66-4002.

RESEARCH REFERENCES

Ark. L. Rev. Uninsured Motorist Insurance Offset for Workmen's Compensation Benefits, 26 Ark. L. Rev. 570.

CASE NOTES

Analysis

Appeals.
Bankruptcy.
Defenses.
Direct Action Against Insured.
Interest.
Policy Provisions.

Appeals.

Where all the conditions of former similar section were met, an appeal without supersedeas did not suspend the right of a plaintiff to proceed against the insurer of an insolvent defendant. Cassidy v. Southern Farm Bureau Cas. Ins. Co., 135 F. Supp. 757 (W.D. Ark. 1955) (decision under prior law).

Bankruptcy.

This section provides that an insurer's liability is not affected by the insured's insolvency; the filing of a petition in bankruptcy is not the type of immunity contemplated by § 23-79-210. Jarboe v. Shelter Ins. Co., 317 Ark. 395, 877 S.W.2d 930 (1994).

Defenses.

Insurance company had a right to make the defense that the policy did not cover the situation of which the injury arose. Equity Mut. Ins. Co. v. Southern Ice Co., 232 Ark. 41, 334 S.W.2d 688 (1960) (decision under prior law).

Direct Action Against Insured.

Where automobile liability policy provided that the insured's insolvency should not release the insurer from liability and that an injured person may sue the insurer for the amount of judgment against the insured if execution is returned unsatisfied, a third party injured was not entitled to bring a direct action against an insurer before recovering judgment against the insured, though the latter was insolvent. Universal Auto. Ins. Co. v. Denton, 185 Ark. 899, 50 S.W.2d 592 (1932) (decision under prior law).

Interest.

Where execution on judgment against tortfeasor was returned unsatisfied and the judgment creditor then obtained judgment against the defendant's insurer, judgment creditor was entitled to interest on the original judgment. Southern Farm Bureau Cas. Ins. Co. v. Robinson, 238 Ark. 159, 379 S.W.2d 8 (1964) (decision under prior law).

Policy Provisions.

As a matter of law, if the conditions stated in former section were not contained in the policy of insurance, the law implied that the policy was issued with reference to the statute and the legal effect is the same if the statutory conditions were actually and fully complied with. Cassidy v. Southern Farm Bureau Cas. Ins. Co., 135 F. Supp. 757 (W.D. Ark. 1955) (decision under prior law).

Cited: State Farm Mut. Auto. Ins. Co. v. Pennington, 215 F. Supp. 784 (E.D. Ark.); Great Am. Ins. Co. v. Ratliff, 242 F. Supp. 983 (E.D. Ark. 1965); Greer v. Mid-West Nat'l Fire & Cas. Ins. Co., 305 F. Supp. 352 (E.D. Ark. 1969).

Subchapter 2 — Automobile Liability Insurance Generally

SECTION.
23-89-201. Broader-than-minimum benefits not prohibited.
23-89-202. Required first party coverage.
23-89-203. Rejection of coverage.
23-89-204. Coverage for passengers and persons struck by insured vehicle.
23-89-205. Exclusion of benefits.
23-89-206. Retention of tort liability.
23-89-207. Insurer's right of reimbursement.
23-89-208. Payments.
23-89-209. Underinsured motorist coverage.
23-89-210. Premium reduction for college graduates.
23-89-211. Total loss settlements.
23-89-212. Motor vehicle liability insurance — Extraterritorial provision.
23-89-213. Proof of insurance.
23-89-214. Motor vehicle liability insurance — Prohibition regarding step-downs.

SECTION.
23-89-215. Priority of primary motor vehicle liability insurance coverage.

SECTION.
23-89-216. Notice concerning use of insurance proceeds.

A.C.R.C. Notes. References to "this subchapter" in §§ 23-89-201 — 23-89-209 and 23-89-211 — 23-89-216 may not apply to § 23-89-210 which was enacted subsequently.

Effective Dates. Acts 1973, No. 138, § 11: July 1, 1974.

Acts 1991, No. 209, § 5: Feb. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present underinsured motorist insurance coverage law is being misinterpreted; that under the present misinterpretation persons covered by underinsured motorist coverage may not receive the benefits intended by the law; and that this act clarifies the law and should therefore go into effect immediately in order to resolve the misinterpretation as soon as possible. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: July 1, 1991, except § 22, effective Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Acts 1993, No. 1180, § 7: Apr. 15, 1993. Emergency clause provided: "An emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 527, § 6: Mar. 6, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present insurance laws should be clarified to indicate that once an insured has rejected certain automobile insurance that the insurer should not be required thereafter to notify the insured of the availability of the rejected coverage at such time as the coverage not rejected is renewed, reinstated, substituted, amended, or replaced; that this act so provides; and this act should go into effect immediately in order to clarify the law as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 458, § 2: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law does not specify that an insurer must pay sales tax when it settles a claim for damages to an automobile as a total loss; that Arkansas law does not make an insurer's failure to pay sales tax when settling a claim for total automobile loss an unfair trade practice; that Arkansas law is not in accord with current insurance regulations concerning settlements for total automobile losses; and that this act is immediately necessary to protect Arkansas insurance consumers and to conform Arkansas law to existing insurance regulations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 998, § 4: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the lack of compliance with the motor vehicle liability insurance law is epidemic in this state; that the owners of motor vehicles that have not complied with mandatory insurance requirements increase the potential financial catastrophe to others involved in accidents with them; that this act is designed and intended to provide enforcement provisions and to ensure increased compliance with the motor vehicle liability insurance law of this state; and that the enactment of new and enhanced penalties and requirements will increase compliance with the motor vehicle liability insurance law. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 485, § 9: Jan. 1, 2008.

RESEARCH REFERENCES

Am. Jur. 7 Am. Jur. 2d, Auto. Ins., § 1 et seq.

23-89-201. Broader-than-minimum benefits not prohibited.

Nothing contained in this subchapter shall be construed to prevent an insurer from providing broader benefits than the minimum benefits enumerated in § 23-89-202.

History. Acts 1973, No. 138, § 7; A.S.A. 1947, § 66-4020.

CASE NOTES

Cited: Aetna Ins. Co. v. Smith, 263 Ark. 849, 568 S.W.2d 11 (1978); Ballesteros v. Nationwide Mut. Ins. Co., 2013 Ark. App. 662, — S.W.3d — (2013).

23-89-202. Required first party coverage.

Every automobile liability insurance policy covering any private passenger motor vehicle issued or delivered in this state shall provide minimum medical and hospital benefits, income disability, and accidental death benefits under policy provisions and on forms approved by the Insurance Commissioner to the named insured and members of his or her family residing in the same household injured in a motor vehicle accident, to passengers injured while occupying the insured motor vehicle, and to persons other than those occupying another vehicle struck by the insured motor vehicle, without regard to fault, as follows:

(1) Medical and Hospital Benefits. All reasonable and necessary expenses for medical, hospital, nursing, dental, surgical, ambulance, funeral expenses, and prosthetic services incurred within twenty-four (24) months after the automobile accident, up to an aggregate of five thousand dollars ($5,000) per person, and may include any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. Expenses for hospital room charges may be limited to semiprivate accommodations;

(2) Income Disability Benefits. Seventy percent (70%) of the loss of income from work during a period commencing eight (8) days after the date of the accident, and not to exceed fifty-two (52) weeks, but subject to a maximum of one hundred forty dollars ($140) per week. In the case of a nonincome earner, the benefits shall consist of expenses not to exceed seventy dollars ($70.00) per week, or any fractional part of a week, which are reasonably incurred for essential services in lieu of those the injured person would have performed without income during a period commencing eight (8) days after the date of the accident and not to exceed fifty-two (52) weeks; and

(3) Accidental Death Benefits. The sum of five thousand dollars ($5,000), to be paid to the personal representative of the insured, should injury, sickness, or disease resulting from an automobile accident cause death within one (1) year from the date of the accident.

History. Acts 1973, No. 138, § 1; 1981, No. 802, § 1; A.S.A. 1947, § 66-4014; Acts 1987, No. 336, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Copeland, A Brief Survey of Some Important 1990 Insurance Law Decisions, 1991 Ark. L. Notes 75.

U. Ark. Little Rock L.J. Survey — Insurance, 10 U. Ark. Little Rock L.J. 217.

Chamberlin & Holt, Why Arkansas Should Overturn its Anti-Stacking Precedent: A Look at Aggregating Uninsured and Underinsured Motorist Coverage, 21 U. Ark. Little Rock L. Rev. 413.

CASE NOTES

Analysis

In General.
Construction.
Purpose.
Benefits.
Choice of Law.
Common Law.
Construction of Policy.
Coverage Permitted.
Exclusion.
Insured Vehicle Not Involved In Accident.
Liability of Insurer.
Occupants of Insured Vehicle.
Rescission.
Right of Setoff.
Subrogation.
Time of Coverage.
Waiver.

In General.

This section and § 23-89-203 encompass the mandatory offering of coverage accompanied by the right to reject such coverage in whole or in part, not mandatory coverage of any and all risks. Shelter Gen. Ins. Co. v. Williams, 315 Ark. 409, 867 S.W.2d 457 (1993).

Because the Arkansas Supreme Court has previously construed § 23-89-205 to allow an insurer to avoid risks caused by the intentional misconduct of the insured

and because the General Assembly failed to require no-fault coverage for injuries suffered by innocent third parties in such circumstances, the trial court also erred in ordering the insurer to pay the claimants personal injury protection benefits under Arkansas' no-fault law. Southern Farm Bureau Cas. Ins. Co. v. Easter, 374 Ark. 238, 287 S.W.3d 537 (2008).

Construction.

A rejection of no-fault insurance coverage is required when a new declaration occurs which includes a substituted automobile. Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).

Plain language of § 23-89-207 clearly mandates that an insurer's right of reimbursement from its insured only arises whenever" no-fault medical benefits have been paid to the insured, pursuant to this section, "and" the insured has recovered in tort for injury, either by settlement or judgment. The use of the conjunctive word "and" indicates that these criteria serve as prerequisites before an insurer shall have a right to reimbursement from its insured. Progressive Halcyon Ins. v. Saldivar, 2013 Ark. 69 (2013).

Purpose.

The intent of "no fault" insurance was to make an insured whole on relatively minor automobile injury damage claims without regard to fault or liability and without his being required to engage in expensive and extended litigation; however, the purpose was not to require the same amount of coverage to one injured by the negligence of a motorist who carries no liability insurance as would be available had the motorist had the minimum coverage necessary to meet the requirements of the Motor Vehicle Safety Responsibility Act, set out in § 27-19-605. Aetna Ins. Co. v. Smith, 263 Ark. 849, 568 S.W.2d 11 (1978).

Benefits.

In construing a policy provided in accordance with this section, the insurer cannot deduct the amount of medical payments from the accidental death benefits. Farm Bureau Mut. Ins. Co. v. Parrish, 265 Ark. 161, 577 S.W.2d 397 (1979).

Payment in excess of the actual loss does not violate this section and, thus, the stacking of benefits is not prohibited; therefore, since neither the policies involved nor this section prohibited payment in excess of actual losses and no public policy argument was made, the insurer was liable on multiple policies for which multiple premiums were collected. State Farm Mut. Auto. Ins. Co. v. Smith, 292 Ark. 614, 732 S.W.2d 137 (1987).

Since subdivision (3) mandates that all automobile liability policies include coverage for $5,000 in accidental death benefits "to be paid to the personal representative of the insured," the natural construction of the words in a policy providing for the payment of death benefits "to any person or organization authorized by law to receive such payment" would be that they authorize payment to the decedent's personal representative, not to his heirs or distributees. Woolsey v. Nationwide Ins. Co., 697 F. Supp. 1053 (W.D. Ark. 1988), aff'd in part, reversed in part, 884 F.2d 381 (8th Cir. 1989).

Under subdivision (3), the term "personal representative" includes heirs and next-of-kin. Woolsey v. Nationwide Ins. Co., 884 F.2d 381 (8th Cir. 1989).

Like life insurance proceeds, death benefits should pass directly to the beneficiaries and should not enter the decedent's estate to become subject to claims by the decedent's creditors. Woolsey v. Nationwide Ins. Co., 884 F.2d 381 (8th Cir. 1989).

Insurer did not meet its burden of proving that the amount in controversy exceeded $75,000 for an insured's individual claim as required by 28 U.S.C.S. § 1332(a) because before including attorney's fees, the maximum amount the insured could seek was $41,754 under this section and §§ 23-89-208 and 23-89-209, and to reach $75,000, a court would need to award more than $33,000 in attorney's fees, which seemed unlikely; however, the undisputed facts showed that the value of the insurance at issue, measured by the amount that the insurer would charge for the coverages at issue, exceeded $10,000,000, and thus, the amount in controversy for class claims exceeded $5,000,000, the minimum amount for jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.S. § 1332(d), and because the insured could not show "to a legal certainty" that the pay-out for the claims of the class would be less than $5,000,000, her motion to remand was denied. Toller v. Sagamore Ins. Co., 558 F. Supp. 2d 924 (E.D. Ark. 2008).

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. Bohot v. State Farm Mut. Auto. Ins. Co., 2012 Ark. 22, 386 S.W.3d 408 (2012).

Choice of Law.

Where the insurance contract was entered into in Arkansas, but the accident occurred in Colorado, injury party was only allowed to recover $5,000 in no-fault medical coverage as opposed to the $50,000 in benefits allowed under Colo. Rev. Stat. Ann. § 10-4-706(1)(b) since the no-fault claim was subject to Arkansas law; however, the injured party was not precluded from recovering the remaining medical expenses from the tortfeasor under Colo. Rev. Stat. Ann. § 10-4-713(1). Southern Farm Bureau Cas. Ins. Co. v. Craven, 79 Ark. App. 423, 89 S.W.3d 369 (2002).

Common Law.

Arkansas compulsory insurance statutes have not abrogated the insurer's common law right to rescission when: (1) only the insurer and the insured are involved in a noncompulsory provision of the policy, and (2) the policy has been in existence less than 60 days, unless it is a renewal policy. Ferrell v. Columbia Mut. Ins. Cas. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

Construction of Policy.

If there is doubt or uncertainty as to the policy's meaning and it is fairly susceptible of two interpretations, one favorable to the insured and the other favorable to the insurer, the former will be adopted. Arkansas Farm Bureau Ins. Fed'n v. Ryman, 309 Ark. 283, 831 S.W.2d 133 (1992).

Coverage Permitted.

Although this section requires that minimum coverage be provided in all policies, it does not prohibit an insurer from providing broader coverage than that mandated. National Investors Fire & Cas. Ins. Co. v. Edwards, 5 Ark. App. 42, 633 S.W.2d 41 (1982).

When benefits are payable to a named insured, in the event that more than one policy has personal injury protection coverage, the insured's own policy shall provide primary coverage; thus, the applicable policy for no-fault benefits was issued by the carrier for the injured party rather than by the carrier for the vehicle in which the injury occurred. Lawson v. State Farm Mut. Auto. Ins. Co., 291 Ark. 391, 725 S.W.2d 543 (1987).

Exclusion.

Insurance policy exclusion for noncovered vehicles belonging to an insured or relatives in his household was not contrary to public policy because it was in accordance with the minimum requirements for motor vehicle insurance. Ballesteros v. Nationwide Mut. Ins. Co., 2013 Ark. App. 662, — S.W.3d — (2013).

Insured Vehicle Not Involved In Accident.

Insured was unable to collect on an insurance policy that covered a vehicle that was not involved in an accident; since the vehicle that the insured was driving was not insured by the insurer; pursuant to statute, the vehicle that the insured was driving was not covered for personal injury protection. Ballesteros v. Nationwide Mut. Ins. Co., 2013 Ark. App. 662, — S.W.3d — (2013).

Liability of Insurer.

This section does not impose liability upon the insurance carrier for work loss incurred more than 52 weeks after the accident. Glenn v. Farmers & Merchants Ins. Co., 649 F. Supp. 1447 (W.D. Ark. 1986).

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the class members as required by this section, §§ 23-89-403, 23-89-404, and 23-89-209, would exceed 28 U.S.C.S. § 1332(d)

amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Occupants of Insured Vehicle.

Insureds were not entitled to the medical expense benefits that would have been payable under the coverage provisions for a second vehicle that was not involved in the accident since they could not have been occupants of both vehicles when they were hurt. Travelers Ins. Co. v. Estes, 283 Ark. 61, 670 S.W.2d 451 (1984).

Rescission.

Courts may sever compulsory provisions of an insurance policy from noncompulsory provisions and permit rescission only as to noncompulsory provisions. Ferrell v. Columbia Mut. Ins. Cas. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

Right of Setoff.

An automobile insurance carrier cannot, by policy language, set off its medical payments made on behalf of its insured to a third party against its payment for the same insured to the injured party of the policy limit for bodily injury. State Farm Mut. Auto. Ins. Co. v. Sims, 288 Ark. 541, 708 S.W.2d 72 (1986).

Subrogation.

Court erred in granting summary judgment dismissal of the claimant's action, because there was no evidence that the claimant's insurer had a valid lien on the $5200 paid by the insurance company to the claimant pursuant to the parties' settlement of the claimant's tort claim; there was no evidence that the company had obtained a judicial determination that the claimant had been made whole. Lopez v. United Auto. Ins. Co., 2013 Ark. App. 246, 427 S.W.3d 154 (2013).

Time of Coverage.

The date of the accident is the time to determine whether an insurance policy with no-fault coverage is valid and collectible. Mid-Century Ins. Co. v. Anderson, 303 Ark. 54, 791 S.W.2d 706 (1990).

Waiver.

The no-fault coverage provided by this section can be waived; a named driver exclusion cannot violate public policy when one realizes that a prospective purchaser of insurance may reject no-fault insurance altogether. Shelter Gen. Ins. Co. v. Williams, 315 Ark. 409, 867 S.W.2d 457 (1993).

Cited: Northwestern Nat'l Ins. Co. v. American States Ins. Co., 266 Ark. 432, 585 S.W.2d 925 (1979); O'Bar v. MFA Mut. Ins. Co., 275 Ark. 247, 628 S.W.2d 561 (1982); Carnathan v. Farm Bureau Ins. Co., 288 Ark. 399, 705 S.W.2d 885 (1986); Daves v. Hartford Accident & Indem. Co., 302 Ark. 242, 788 S.W.2d 733 (1990); Edens v. Shelter Mut. Ins. Co., 923 F.2d 79 (8th Cir. 1991); Baker v. State Farm Fire & Cas. Co., 34 Ark. App. 59, 805 S.W.2d 665 (1991); Shelter Mut. Ins. Co. v. Irvin, 309 Ark. 331, 831 S.W.2d 135 (1992); Shelter Mut. Ins. Co. v. Bough, 310 Ark. 21, 834 S.W.2d 637 (1992); State Farm Mut. Auto. Ins. Co. v. Brown, 48 Ark. App. 136, 892 S.W.2d 519 (1995); Dean v. Colonia Underwriters Ins. Co., 52 Ark. App. 91, 915 S.W.2d 728 (1996); Southern Farm Bureau Cas. Ins. Co. v. Allen, 326 Ark. 1023, 934 S.W.2d 527 (1996).

23-89-203. Rejection of coverage.

(a) The named insured shall have the right to reject in writing all or any one (1) or more of the coverages enumerated in § 23-89-202.

(b) After a named insured or applicant for insurance rejects this coverage, the insurer or any of its affiliates shall not be required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of such coverage.

History. Acts 1973, No. 138, § 2; A.S.A. 1947, § 66-4015; Acts 1995, No. 527, § 1.

CASE NOTES

Analysis

In General.
Legislative Intent.
Retroactivity.
Signature.
Substitution of Vehicle.
Waiver.

In General.

This section and § 23-89-202 encompass the mandatory offering of coverage accompanied by the right to reject such coverage in whole or in part, not mandatory coverage of any and all risks. Shelter Gen. Ins. Co. v. Williams, 315 Ark. 409, 867 S.W.2d 457 (1993).

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. Bohot v. State Farm Mut. Auto. Ins. Co., 2012 Ark. 22, 386 S.W.3d 408 (2012).

Legislative Intent.

Even though this section, in 1994, provided that a rejection would be effective for policy renewals, that language did not precisely embrace renewals when vehicles have been substituted; had the General Assembly desired to expand single-rejection concept to substituted vehicles as well as to simple renewals of existing coverage, it could easily have done so, but it had not yet done so. Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).

Retroactivity.

Even though General Assembly amended this section to clarify insurer's duty with regard to notifying insureds of no-fault and uninsured motorist coverage when there is a substitution of coverage, it would be patently unfair to sanction a legislative clarification of a preexisting statute when the Supreme Court had previously construed the effect of mandatory coverage on substituted vehicles contrary to the purported clarification; thus, where motorist was injured in the accident on July 24, 1994, the version of this section as it existed on that date would apply. Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).

Signature.

Insured's wife completed an online application expressly rejecting medical benefits coverage, as under § 25-32-107(c) the record of the wife's electronic signature that memorialized the wife's rejection of coverage qualified as a written rejection of benefits under this section. Barwick v. Government Employee Ins. Co., 2011 Ark. 128 (2011).

Substitution of Vehicle.

Where 1978 Oldsmobile Ninety-Eight was included in the 1994 insurance declaration sent to motorist prior to accident involving that vehicle, this equated to delivery of a new policy on the substituted covered vehicle and a rejection of no-fault insurance was required at that time; failure to obtain a rejection of the coverage with respect to the 1978 Oldsmobile Ninety-Eight resulted in no-fault coverage being in effect in 1994 pursuant to this section. Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).

Waiver.

The no-fault coverage provided by § 23-89-202 can be waived; a named driver exclusion cannot violate public policy when one realizes that a prospective purchaser of insurance may reject no-fault insurance altogether. Shelter Gen. Ins. Co. v. Williams, 315 Ark. 409, 867 S.W.2d 457 (1993).

Cited: O'Bar v. MFA Mut. Ins. Co., 275 Ark. 247, 628 S.W.2d 561 (1982); Carnathan v. Farm Bureau Ins. Co., 288 Ark. 399, 705 S.W.2d 885 (1986); Glenn v. Farmers & Merchants Ins. Co., 649 F. Supp. 1447 (W.D. Ark. 1986); Southern Farm Bureau Cas. Ins. Co. v. Allen, 326 Ark. 1023, 934 S.W.2d 527 (1996); Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

23-89-204. Coverage for passengers and persons struck by insured vehicle.

(a) The coverages provided in § 23-89-202 shall apply only to occupants of the insured vehicle and to persons struck by the insured vehicle, including pedestrians, bicyclists, motorcyclists, persons in a horse-drawn wagon or cart, and persons riding on an animal, and to none other.

(b) However, the coverages shall not be applicable or payable if the prescribed minimum coverages are afforded to those occupants and to persons struck by the insured vehicle, either as a named insured or additional insured under another valid and collectible automobile insurance policy.

History. Acts 1973, No. 138, § 3; A.S.A. 1947, § 66-4016.

RESEARCH REFERENCES

Ark. L. Notes. Copeland, A Brief Survey of Some Important 1990 Insurance Law Decisions, 1991 Ark. L. Notes 75.

CASE NOTES

Analysis

Business Premises Exclusion.
Double Recovery Prohibited.
Exclusion.
Insured Vehicle Not Involved In Accident.
Occupants of Insured Vehicle.
Primary Coverage.
Time of Coverage.

Business Premises Exclusion.

Where insured was injured when a car crashed into the wall of her business, the trial court properly granted summary judgment for the insurance company which denied the insured underinsured motorist coverage and personal injury protection coverage based upon the clear and unambiguous terms of the policy's business premises exclusion. Harasyn v. St. Paul Guardian Ins. Co., 349 Ark. 9, 75 S.W.3d 696 (2002).

Double Recovery Prohibited.

Provision in insurance policy that its coverage would be excess insurance if the insured had other like insurance and would apply only to the extent that the other insurance was less than the statutory amount was not against public policy since this section expressly prohibits double recovery by a passenger's estate. MFA Mut. Ins. Co. v. Van Driesum, 282 Ark. 24, 665 S.W.2d 286 (1984).

The estate of an insured passenger who was killed while riding in an insured car could not recover the death benefit from both the decedent's own insurer and the driver's insurer. MFA Mut. Ins. Co. v. Van Driesum, 282 Ark. 24, 665 S.W.2d 286 (1984).

Exclusion.

Insurance policy exclusion for noncovered vehicles belonging to an insured or relatives in his household was not contrary to public policy because it was in accordance with the minimum requirements for motor vehicle insurance. Ballesteros v. Nationwide Mut. Ins. Co., 2013 Ark. App. 662, — S.W.3d — (2013).

Insured Vehicle Not Involved In Accident.

Insured was unable to collect on an insurance policy that covered a vehicle that was not involved in an accident; since the vehicle that the insured was driving was not insured by the insurer; pursuant to statute, the vehicle that the insured was driving was not covered for personal injury protection. Ballesteros v. Nation-

wide Mut. Ins. Co., 2013 Ark. App. 662, — S.W.3d — (2013).

Occupants of Insured Vehicle.

Insureds were not entitled to the medical expense benefits that would have been payable under the coverage provisions for a second vehicle that was not involved in the accident since they could not have been occupants of both vehicles when they were hurt. Travelers Ins. Co. v. Estes, 283 Ark. 61, 670 S.W.2d 451 (1984).

When benefits are payable to a named insured, in the event that more than one policy has personal injury protection coverage, the insured's own policy shall provide primary coverage; thus, the applicable policy for no-fault benefits was issued by the carrier for the injured party rather than by the carrier for the vehicle in which the injury occurred. Lawson v. State Farm Mut. Auto. Ins. Co., 291 Ark. 391, 725 S.W.2d 543 (1987).

Primary Coverage.

Where an injured party had a valid and collectible policy that included no-fault coverage on the date of the accident, it was primary in coverage responsibility; therefore, the no-fault coverage of the driver of the other vehicle is not applicable in accordance with this section. Mid-Century Ins. Co. v. Anderson, 303 Ark. 54, 791 S.W.2d 706 (1990).

Time of Coverage.

The date of the accident is the time to determine whether an insurance policy with no-fault coverage is valid and collectible. Mid-Century Ins. Co. v. Anderson, 303 Ark. 54, 791 S.W.2d 706 (1990).

23-89-205. Exclusion of benefits.

An insurer may exclude benefits to any insured, or to his or her personal representative, under a policy required by § 23-89-202, when the insured's conduct contributed to the injury he or she sustained in any of the following ways:

(1) Causing injury to himself or herself intentionally; or

(2) Causing injury while in the commission of a felony or while seeking to elude lawful apprehension or arrest by a law enforcement official.

History. Acts 1973, No. 138, § 4; A.S.A. 1947, § 66-4017.

CASE NOTES

Analysis

Legislative Intent.
Workers' Compensation.

Legislative Intent.

There is no indication that it was the intent of the General Assembly to require that the "no fault" coverage be provided whether the insured has other coverage providing the same benefits, or not, and this section does not indicate such a legislative intent. Aetna Ins. Co. v. Smith, 263 Ark. 849, 568 S.W.2d 11 (1978).

Because the Arkansas Supreme Court has previously construed this section to allow an insurer to avoid risks caused by the intentional misconduct of the insured and because the General Assembly failed to require no-fault coverage for injuries suffered by innocent third parties in such circumstances, the trial court also erred in ordering the insurer to pay the claimants personal injury protection benefits under Arkansas' no-fault law. Southern Farm Bureau Cas. Ins. Co. v. Easter, 374 Ark. 238, 287 S.W.3d 537 (2008).

Workers' Compensation.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part;

because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under this section. Bohot v. State Farm Mut. Auto. Ins. Co., 2012 Ark. 22, 386 S.W.3d 408 (2012).

23-89-206. Retention of tort liability.

Tort liability arising from the ownership, maintenance, or use of a motor vehicle within this state is retained.

History. Acts 1973, No. 138, § 5; A.S.A. 1947, § 66-4018.

23-89-207. Insurer's right of reimbursement.

(a) Whenever a recipient of benefits under § 23-89-202(1) and (2) recovers in tort for injury, either by settlement or judgment, the insurer paying the benefits has a right of reimbursement and credit out of the tort recovery or settlement, less the cost of collection, as defined.

(b) All cost of collection thereof shall be assessed against the insurer and insured in the proportion each benefits from the recovery.

(c) The insurer shall have a lien upon the recovery to the extent of its benefit payments.

(d) The insurer for the party who is liable in damages to the injured party shall not condition settlement or payment of a judgment in favor of the injured party upon issuing a single check jointly to the injured party and the injured party's insurance company.

History. Acts 1973, No. 138, § 6; A.S.A. 1947, § 66-4019; Acts 2005, No. 269, § 1.

Cross References. Subrogation recovery, § 23-79-146.

RESEARCH REFERENCES

ALR. Conduct or inaction by insurer constituting waiver of, or creating estoppel to assert, right of subrogation. 125 A.L.R.5th 1.

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Ark. L. Rev. Comment, Is the Made-Whole Requirement More than We Bargained For?: From Franklin to Tallant — a Call to Reexamine the Made-Whole Doctrine in Arkansas, 60 Ark. L. Rev. 295.

CASE NOTES

Analysis

Construction.
Applicability.
Accidental Death Benefits.
Amount of Lien.
Attorney's Fees.
Cost of Collection.
Credit Against Liability.
Right of Setoff.
Right to Subrogation.
Sharing in Legal Costs.
Suit Against Insurer.

Construction.

Section 16-22-308 covers the same subject as this section and aids in determining legislative intent for this section. Wenrick v. Crater, 315 Ark. 361, 868 S.W.2d 60 (1993).

Insurer was entitled to pursue its subrogation claim even though insured had not been made whole as a result of his

recovery from tortfeasor's insurer since this section does not restrict insurer's subrogation rights only in the event insured recovers medical benefits or lost wages. Dean v. Colonia Underwriters Ins. Co., 52 Ark. App. 91, 915 S.W.2d 728 (1996).

Plain language of this section clearly mandates that an insurer's right of reimbursement from its insured only arises whenever" no-fault medical benefits have been paid to the insured, pursuant to § 23-89-202, "and" the insured has recovered in tort for injury, either by settlement or judgment. The use of the conjunctive word "and" indicates that these criteria serve as prerequisites before an insurer shall have a right to reimbursement from its insured. Progressive Halcyon Ins. v. Saldivar, 2013 Ark. 69 (2013).

Insurer properly sought general subrogation benefits from a third-party tortfeasor under § 23-79-146. The circuit court erred in its interpretation of this section in conjunction with § 23-79-146. Progressive Halcyon Ins. v. Saldivar, 2013 Ark. 69 (2013).

Applicability.

The right of reimbursement and credit is allowed pursuant to this section in a situation where there are payments from more than one source. Shelter Mut. Ins. Co. v. Tucker, 295 Ark. 260, 748 S.W.2d 136 (1988).

The equitable nature of subrogation is granted an insurer to prevent the insured from receiving a double recovery; thus, while the general rule is that an insurer is not entitled to subrogation unless the insured has been made whole for his loss, the insurer should not be precluded from employing its right of subrogation when the insured has been fully compensated and is in a position where the insured will recover twice for some of his or her damages. Shelter Mut. Ins. Co. v. Bough, 310 Ark. 21, 834 S.W.2d 637 (1992).

Accidental Death Benefits.

While an insurance company has the right to reduce or claim reimbursement for any medical hospital benefits or income disability benefits paid out, no such right is granted in regard to accidental death benefits. O'Bar v. MFA Mut. Ins. Co., 275 Ark. 247, 628 S.W.2d 561 (1982).

A reduction clause in an automobile insurance policy which provided that any amount payable under the terms of the policy on account of the insured's death would be reduced by the amount paid in accidental death benefits under any disability benefits law was void because it violated public policy. O'Bar v. MFA Mut. Ins. Co., 275 Ark. 247, 628 S.W.2d 561 (1982).

Amount of Lien.

An insurance company which makes a no-fault payment to its own insured is entitled to a lien upon, and a right of reimbursement from, any tort recovery obtained by its insured, less the insurance company's proportionate part of the costs of collection. Northwestern Nat'l Ins. Co. v. American States Ins. Co., 266 Ark. 432, 585 S.W.2d 925 (1979).

Attorney's Fees.

Since the cost of collection includes attorney's fees under the provisions of this section, reasonable attorney's fees should be prorated between the parties according to the benefit each receives and not assessed soley against the insurer. National Investors Fire & Cas. Ins. Co. v. Edwards, 5 Ark. App. 42, 633 S.W.2d 41 (1982).

Where victim did not notify his insurer of his suit against tortfeasor so that insurer could intervene to protect its interest and then refused to reimburse insurer out of the settlement recovery and insurer was forced to bring a different action to enforce its claim, court was still required to follow subsection (b), although the end result might be unjust, in apportioning the costs of collection, including reasonable attorney's fees, between the victim and the insurer. Daves v. Hartford Accident & Indem. Co., 302 Ark. 242, 788 S.W.2d 733 (1990).

The insurer of an automobile accident victim was not required to pay any portion of the attorney's fees its insured incurred in settling her property damage claim with tortfeasor's insurer. Cockman v. State Farm Auto. Ins. Co., 313 Ark. 340, 854 S.W.2d 343 (1993).

Cost of Collection.

The words "cost of collection" in subsection (b) of this section mean expenses such as court costs, cost of service of process, cost of witness fees, cost of depositions, cost of attorney fees, and other similar expenses. Wenrick v. Crater, 315 Ark. 361, 868 S.W.2d 60 (1993).

Once an expense has been determined to be a cost of collection, the trial court has discretion to, and should, limit that expense to a reasonable amount. Wenrick v. Crater, 315 Ark. 361, 868 S.W.2d 60 (1993).

Credit Against Liability.

Insurer held entitled to a credit against liability out of the settlement recovery as provided by the subrogation provisions contained in the policy and by this section. National Investors Fire & Cas. Ins. Co. v. Edwards, 5 Ark. App. 42, 633 S.W.2d 41 (1982).

Right of Setoff.

An automobile insurance carrier cannot, by policy language, set off its medical payments made on behalf of its insured to a third party against its payment for the same insured to the injured party of the policy limit for bodily injury. State Farm Mut. Auto. Ins. Co. v. Sims, 288 Ark. 541, 708 S.W.2d 72 (1986).

Finding against the insured was improper where the trial court effectively gave the insurer a setoff for its medical payments which was erroneous because it could not set off one payment under its policy for another under the same policy. Gause v. Shelter Gen. Ins. Co., 81 Ark. App. 133, 98 S.W.3d 854 (2003).

Right to Subrogation.

Made-whole doctrine, which states that an insurer is not entitled to subrogation unless the insured has been fully made whole, applies to reimbursement claims under this section. Ryder v. State Farm Mut. Auto. Ins. Co., 371 Ark. 508, 268 S.W.3d 298 (2007).

In a car accident case, because the made-whole doctrine, holding that the insurer was not entitled to subrogation unless the insured had been fully made whole, applied and the insurer did not address whether the insured had been made whole by the settlement with the other driver, it was clear that a genuine question of fact remained as to whether the insured was made whole by the settlement; thus, summary judgment in favor of the insurer was inappropriate. Ryder v. State Farm Mut. Auto. Ins. Co., 371 Ark. 508, 268 S.W.3d 298 (2007).

Right to reimbursement under this section is a right to subrogation vested in the insurer that is established by statute. Ryder v. State Farm Mut. Auto. Ins. Co., 371 Ark. 508, 268 S.W.3d 298 (2007).

Trial court erred in dismissing the insurer's declaratory judgment count, having erred in determining the insurer had a valid lien under this section, that arose at the time the insurer made medical payment to the insured. The subrogation lien could not arise or attach until the insured received the settlement proceeds and there was a judicial determination that she had been made whole. Riley v. State Farm Mut. Auto. Ins. Co., 2011 Ark. 256, 381 S.W.3d 840 (2011).

Court erred in granting summary judgment dismissal of the claimant's action, because there was no evidence that the claimant's insurer had a valid lien on the $5200 paid by the insurance company to the claimant pursuant to the parties' settlement of the claimant's tort claim; there was no evidence that the company had obtained a judicial determination that the claimant had been made whole. Lopez v. United Auto. Ins. Co., 2013 Ark. App. 246, 427 S.W.3d 154 (2013).

Sharing in Legal Costs.

Where the personal representative of the estate was authorized by the court to contract for legal services and pursue a wrongful death action against the tortfeasor, and the insurance company of the deceased benefited from the tort settlement to the full extent of its subrogation claim but did not assist in the procurement of the settlement, the trial court erred in not assessing against the amount of recovery payable to the insurance company its proportionate share of the cost incurred by the personal representative in its pursuit of the tort settlement. Baker v. State Farm Fire & Cas. Co., 34 Ark. App. 59, 805 S.W.2d 665 (1991).

Where the insured's attorney stipulated to the insurance company's right to subrogation before trial, and neither the insurance company nor its attorney attended the trial, the money collected was due to the insured's attorney's efforts and, as sole beneficiary of the recovery, the insurance company was responsible for the cost of collection. State Farm Mut. Auto. Ins. Co. v. Bing, 305 Ark. 280, 808 S.W.2d 304 (1991).

Suit Against Insurer.

While it may be the "normal" procedure for a subrogated insurer to file a subroga-

tion claim against the wrongdoer, there is no reason why an insurer cannot enforce its claim against the wrongdoer by an action against the wrongdoer's insurer. Daves v. Hartford Accident & Indem. Co., 302 Ark. 242, 788 S.W.2d 733 (1990).

Cited: Atkins v. Pilot Life Ins. Co., 4 Ark. App. 257, 630 S.W.2d 50 (1982); Curtis v. Sears, Roebuck & Co., 754 F.2d 781, 76 A.L.R. Fed. 163 (8th Cir. 1985); Carnathan v. Farm Bureau Ins. Co., 288 Ark. 399, 705 S.W.2d 885 (1986); Edens v. Shelter Mut. Ins. Co., 923 F.2d 79 (8th Cir. 1991).

23-89-208. Payments.

(a) Payment under the coverages enumerated in § 23-89-202(1) and (2) shall be made on a monthly basis as benefits accrue.

(b) Benefits for any period are overdue if not paid within thirty (30) days after the insurer received reasonable proof of the amount of all benefits accruing during that period.

(c) If reasonable proof is not supplied as to all benefits accrued, the portion supported by reasonable proof is overdue if not paid within thirty (30) days after the proof is received by the insurer.

(d) Any part or all of the remainder of the benefits that is later supported by reasonable proof is overdue if not paid within thirty (30) days after the proof is received by the insurer.

(e) In the event the insurer fails to pay the benefits when due, the person entitled to the benefits may bring an action in contract to recover them.

(f) In the event the insurer is required by the action to pay the overdue benefits, the insurer shall, in addition to the benefits received, be required to pay the reasonable attorney's fees incurred by the other party, plus twelve percent (12%) penalty, plus interest thereon from the date these sums became overdue.

History. Acts 1973, No. 138, § 8; A.S.A. 1947, § 66-4021.

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CASE NOTES

Analysis

Penalty and Attorney's Fees.
Reasonable Proof.
Thirty Days.
Workers' Compensation.

Penalty and Attorney's Fees.

Plaintiff held not entitled to attorney's fees or penalty against the insurer. National Investors Fire & Cas. Ins. Co. v. Edwards, 5 Ark. App. 42, 633 S.W.2d 41 (1982).

The trial judge did not err in awarding prejudgment interest on the medical payments claim; however, the trial judge erred in awarding prejudgment interest on the 12 percent penalty and attorney's fees because the penalty and attorney's fees did not become due until they were awarded by the court. State Farm Mut. Auto. Ins. Co. v. Brown, 48 Ark. App. 136, 892 S.W.2d 519 (1995).

Although the amount that an insured claimed in penalties and attorney's fees under this section could be considered for purposes of determining whether 28

U.S.C.S. § 1332(a) amount in controversy requirements were met, those amounts alone were not sufficient to give a district court jurisdiction over the insured's class action suit against an insurance company. Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Insurer did not meet its burden of proving that the amount in controversy exceeded $75,000 for an insured's individual claim as required by 28 U.S.C.S. § 1332(a) because before including attorney's fees, the maximum amount the insured could seek was $41,754 under § 23-89-202, this section, and § 23-89-209, and to reach $75,000, a court would need to award more than $33,000 in attorney's fees, which seemed unlikely; however, the undisputed facts showed that the value of the insurance at issue, measured by the amount that the insurer would charge for the coverages at issue, exceeded $10,000,000, and thus, the amount in controversy for class claims exceeded $5,000,000, the minimum amount for jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.S. § 1332(d), and because the insured could not show "to a legal certainty" that the pay-out for the claims of the class would be less than $5,000,000, her motion to remand was denied. Toller v. Sagamore Ins. Co., 558 F. Supp. 2d 924 (E.D. Ark. 2008).

Reasonable Proof.

Sending a hospital bill unaccompanied by any sort of signed application proving that the medical expense entitles the sender to an insurance policy "benefit" is not sufficient to satisfy the "reasonable proof" requirement. Roy v. Farmers & Merchants Ins. Co., 307 Ark. 213, 819 S.W.2d 2 (1991).

Thirty Days.

Where hospital sent a bill to the insurance company in February 1, the company's claim adjuster received an application for benefits from the insured's attorney on February 16, and the insured received benefits on March 14, the benefits were not overdue because they were paid within 30 days after the insurer received proof from the insured. State Farm Mut. Auto. Ins. Co. v. Brown, 48 Ark. App. 136, 892 S.W.2d 519 (1995).

Workers' Compensation.

Trial court did not err in granting an insurer's motion for summary judgment in an insured's action to recover benefits under a no-fault medical provision because the exclusion contained in the insured's policy was valid and applied in all scenarios where workers' compensation benefits either had been paid in whole or in part or could be paid in whole or in part; because the insured was covered by workers' compensation, she was excluded from receiving medical-payments coverage under § 23-89-205. Bohot v. State Farm Mut. Auto. Ins. Co., 2012 Ark. 22, 386 S.W.3d 408 (2012).

Cited: Carnathan v. Farm Bureau Ins. Co., 288 Ark. 399, 705 S.W.2d 885 (1986); Woolsey v. Nationwide Ins. Co., 884 F.2d 381 (8th Cir. 1989).

23-89-209. Underinsured motorist coverage.

(a)(1) No private passenger automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicles in this state shall be delivered or issued in this state or issued as to any private passenger automobile principally garaged in this state unless the insured has the opportunity, which he or she may reject in writing, to purchase underinsured motorist coverage.

(2) After a named insured or applicant for insurance rejects underinsured motorist coverage, the insurer or any of its affiliates shall not be required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of such coverage.

(3) The coverage shall enable the insured or the insured's legal representative to recover from the insurer the amount of damages for bodily injuries to or death of an insured which the insured is legally entitled to recover from the owner or operator of another motor vehicle

whenever the liability insurance limits of the other owner or operator are less than the amount of the damages incurred by the insured.

(4) Underinsured motorist coverage shall be at least equal to the limits prescribed for bodily injury or death under § 27-19-605.

(5) Coverage of the insured pursuant to underinsured motorist coverage shall not be reduced by the tortfeasor's insurance coverage except to the extent that the injured party would receive compensation in excess of his or her damages.

(b)(1) Underinsured motorist coverage as described in this section shall not be available to insureds nor shall insurers be mandated to offer that coverage unless the insured has elected uninsured motorist coverage as provided by § 23-89-403.

(2) Underinsured motorist coverage shall not be issued without uninsured motorist coverage being issued in coordination therewith.

(c) If a tentative agreement to settle for the liability limits of the owner or operator of the other vehicle has been reached between the insured and the owner or operator, written notice may be given by the insured injured party to his or her underinsured motorist coverage insurer by certified mail, return receipt requested. The written notice shall include:

(1) Written documentation of pecuniary losses incurred, including copies of all medical bills;

(2) Written authorization or a court order authorizing the underinsured motorist insurer to obtain medical reports from all employers and medical providers; and

(3) Written confirmation from the tortfeasor's liability insurer as to the amount of the alleged tortfeasor's liability limits and the terms of the tentative settlement, which shall in no event include any component sum representing punitive or exemplary damages. However, in no event shall evidence of the referenced liability limits, the fact that a tentative settlement was reached, or the terms of the tentative settlement be admissible in any civil action with the sole exceptions of:

(A) Actions by underinsured motorist insurers to enforce subrogation rights as contemplated by this subchapter;

(B) Actions by first party liability insureds against their insurer to enforce their contract or a settlement hereunder, if any; and

(C) Actions by first party underinsured motorist insureds against their insurer to enforce their contract or a settlement hereunder.

(d)(1) Within thirty (30) days of receipt of the written notice, the underinsured motorist insurer may make payment to its insured of an amount equal to the tentative settlement amount agreed to by the owner or operator of the other motor vehicle or his or her liability insurer.

(2) In such event, the underinsured motorist insurer shall be entitled to subrogate to its insured's right of recovery against the owner or operator of the other motor vehicle to the extent of such payments and to the extent of any underinsured motorist insurance benefit it pays to its insured.

(3) If the underinsured motorist insurer fails to pay its insured the amount of the tentative tort settlement within thirty (30) days, the underinsured motorist insurer has no right to the proceeds of any settlement or judgment between its insured and the other owner or operator and/or the owner's or operator's liability insurer, no right to otherwise recoup the amount of the underinsured motorist benefit it may pay from the other owner or operator or his or her insurer, and no right to refuse payment of its underinsured motorist coverage benefit by reason of the settlement made by its insured.

(e) In the event that the tortfeasor's motor vehicle liability insurance carrier and the underinsured motorist coverage are provided by the same insurance company, the requirements of subsections (c) and (d) of this section are waived, and the underinsured party may proceed against his or her underinsured insurance carrier at any time after settlement of the underlying tortfeasor's liability policy claim.

History. Acts 1987, No. 335, §§ 1, 2; 1991, No. 209, § 1; 1991, No. 1123, § 22; 1993, No. 1180, § 1; 1997, No. 284, § 1.

A.C.R.C. Notes. Acts 1991, No. 209, amended this section and was effective February 21, 1991 to April 9, 1991.

Acts 1993, No. 1180, § 3, provided: "The notice to policyholders regarding the right to accept or reject the underinsured motorist coverage as required by Arkansas Code § 23-89-209 applies to new policies issued on and after July 1, 1993 and to policies existing on the effective date of this act but only from and after their first renewal on or after January 1, 1994."

Publisher's Notes. Acts 1993, No. 1180, § 2, provided: "The General Assembly finds that full implementation of underinsured motorist benefits has been hindered in this state by reason of the fact that the issuers of such coverage have often refused payment of the benefit when the insured injured party has, knowingly or unknowingly, given a complete release of the tortfeasor upon receipt of the tortfeasor's liability limits. While the General Assembly acknowledges and appreciates the underinsured motorist coverage insurers' right to subrogate against the tortfeasor for underinsured benefits it may pay to its own first party insured, the practical effect of such insurer's position (when combined with zealous protection of the tortfeasor by liability insurers) has been to delay, obstruct, and defeat the timely payment of underinsured motorist benefits. The General Assembly believes it is in the public interest to require that if a tortfeasor and his liability insurer have made a tentative settlement for policy limits, the underinsured insurer must decide within thirty (30) days whether it:

"(i) believes subrogation or indemnity rights are worth pursuing, in which event it must pay its insured the other owner or driver's liability limits (in addition to the proper portion of their underinsured benefit); or

"(ii) believes that there is no point in pursuit of subrogation; after 30 days, it will be held to have waived same — which will allow the injured party to obtain the other owner or driver's liability limits as well as such portion of the underinsured benefit as to which he is entitled.

"The General Assembly also finds that since the enactment of Act 1987, No. 335, §§ 1.2 calling for the mandated offer of underinsured motorist coverage there has been confusion amongst insurers and the general public as to whether underinsured motorist coverage must be offered separately from the uninsured motorist coverages. Since the issuance of underinsured motorist coverage in the absence of uninsured motorist coverage creates 'gaps' in insurance coverage and is inherently misleading, the General Assembly herewith declares its intent that the two coverages always be offered (and accepted or rejected) in a coordinated package."

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CASE NOTES

Analysis

In General.
Construction.
Applicability.
Attorney's Fees.
Compliance.
Consent Clauses.
Coverage.
Duty of Insurer.
Exclusion.
Implied Coverage.
Legislative Intent.
Limits of Recovery.
Rejection of Coverage.
Stacking.
Time Limitations.

In General.

Underinsured motorist coverage provides benefits when the policyholder, involved in an accident with another vehicle, is legally entitled to recover damages that exceed the offending motorist's insurance coverage. Edens v. Shelter Mut. Ins. Co., 923 F.2d 79 (8th Cir. 1991).

This section sets forth the general purpose of the coverage, not the amount. Ross v. United Servs. Auto. Ass'n, 320 Ark. 604, 899 S.W.2d 53 (1995).

The legislative intent is clear that the inability to obtain the limits of liability coverage is what triggers the availability of underinsured motorist (UIM) coverage. Shelter Mut. Ins. Co. v. Williams, 69 Ark. App. 35, 9 S.W.3d 545 (2000).

The statute does not require insurers issuing commercial automobile liability policies to offer underinsured-motorist coverage. Monday v. Canal Ins. Co., 348 Ark. 435, 73 S.W.3d 594 (2002).

Construction.

The presence of the emergency clause in Section 5 of the 1991 amendment persuaded the court to apply the amendment retroactively. Henderson v. Universal Underwriters Ins. Co., 768 F. Supp. 688 (E.D. Ark. 1991).

The 1991 amendment to § 23-89-209 makes it clear that the legislature intended the 1987 Act, when passed, to provide that an insured's recovery of underinsured motorist coverage should not be reduced or set-off by the amount received from the tortfeasor. Henderson v. Universal Underwriters Ins. Co., 768 F. Supp. 688 (E.D. Ark. 1991).

The specific expression in 1991 Ark. Act 1123 that the written rejection requirement be effective on "February 21, 1991, or the first renewal after February 21, 1991" indicates the legislature intent that the initial requirement of offering the underinsured motorist coverage be effective on July 20, 1987, or the first renewal after July 20, 1987. Nixon v. H & C Elec. Co., 307 Ark. 154, 818 S.W.2d 251 (1991).

Subsection (a) was amended a second time by Section 22 of Act 1123 of 1991, but the amendments made by Act 209 of 1991 were not affected. American Cas. Co. v. Mason, 312 Ark. 166, 848 S.W.2d 392 (1993).

The 1991 amendments made it clear that, prior to 1991, the legislature did not intend an insurer to have a duty to offer the underinsured motorist coverage after the insured rejected coverage in writing. Warford v. State Farm Mut. Auto. Ins. Co., 69 F.3d 860 (8th Cir. 1995).

Trial court erred in refusing to direct a verdict in insurance company's favor because its underinsured motorist coverage excluded the definition of an uninsured motor vehicle from an underinsured vehicle and erred in particular on the plain meaning of this section, which clearly refers to "the tortfeasor's insurance coverage." State Farm Mut. Auto. Ins. Co. v. Beavers, 321 Ark. 292, 901 S.W.2d 13 (1995).

The exclusive remedy provision of § 11-9-105 does not bar an employee from being legally entitled to recover under the underinsured motorist statute against a co-employee who was the owner or operator of the vehicle in which the employee was riding at the time of the injury. Southern Farm Bureau Cas. Ins. Co. v. Pettie, 54 Ark. App. 79, 924 S.W.2d 828 (1996).

The statute does not void an insurance company's common law subrogation rights. Hartford Ins. Co. v. Mullinax, 336 Ark. 335, 984 S.W.2d 812 (1999).

There is a distinction between uninsured (UM) and underinsured (UIM) coverage. UM coverage applies when a tortfeasor either has no insurance or has less than the amount required by law, and UM coverage is designed to guarantee a minimum recovery equal to that amount. UIM coverage applies when the tortfeasor has at least the amount of insurance required by law but not enough to fully compensate the victim. Shelter Mut. Ins. Co. v. Williams, 69 Ark. App. 35, 9 S.W.3d 545 (2000).

Section 23-89-209(a) does not broadly specify any class of persons for coverage other than "the insured." Therefore, a reduction clause in a motor vehicle insurance policy did not violate § 23-89-209(a)(5) where a passenger was not entitled to recover pursuant to an underinsured motorist policy after receiving payment under the liability provision of the same policy. Nash v. American Nat'l Prop. & Cas. Co., 98 Ark. App. 258, 254 S.W.3d 758 (2007).

Insured was not entitled to underinsured-motorist coverage under a personal umbrella liability policy endorsement to an insurance policy issued by the insurer because an obligation to offer uninsured-motorist coverage was a prerequisite to an insurer's obligation to offer underinsured-motorist coverage under this section, an insurer was not obligated under § 23-89-403(a)(3)(B) to offer uninsured-motorist coverage in conjunction with an umbrella policy, and thus, an insurer issuing an umbrella policy had no obligation to offer underinsured-motorist coverage to its insured. Econ. Premier Assur. Co. v. Everhart, 623 F. Supp. 2d 988 (W.D. Ark. 2009).

Applicability.

Under Arkansas choice of law rules, a Kansas statute mandating anti-stacking provisions, and not this section, applied to an insurance policy where, at the time the policy of insurance was issued and at the time of the accident, the policy holders resided in Kansas and where the policy of insurance was issued to cover an automobile to be garaged in Kansas and presumably to be driven there even though the accident occurred in Arkansas. Lienemann v. King, 832 F. Supp. 257 (W.D. Ark. 1993), aff'd without op., 26 F.3d 126 (8th Cir. Ark. 1994).

It is practical and pure common sense that underinsurance should not pertain until it is determined whether the insured is in fact underinsured. State Farm Mut. Auto. Ins. Co. v. Thomas, 316 Ark. 345, 871 S.W.2d 571 (1994).

Underinsured coverage does not apply when the insured is struck by an uninsured motorist. State Farm Mut. Auto. Ins. Co. v. Beavers, 321 Ark. 292, 901 S.W.2d 13 (1995).

To allow uninsured and underinsured coverage to apply to the same accident would permit a double recovery in the face of clear statutory and policy language to the contrary. State Farm Mut. Auto. Ins. Co. v. Lindsey, 54 Ark. App. 390, 926 S.W.2d 850 (1996).

The amount of damages incurred by the insured for bodily injury and the amount of the liability insurance benefits that the insured has recovered from the tortfeasor must be known before payment by the underinsurance carrier is required. Hartford Ins. Co. v. Mullinax, 336 Ark. 335, 984 S.W.2d 812 (1999).

Trial court's decision to award interest, as well as attorney fees and a penalty, was justified because injured driver had notified her insurer that she had settled with the other driver's insurer and her insurer knew, from the time that she made her demand, that it was liable under injured driver's underinsured motorist policy. Na-

tionwide Mut. Ins. Co. v. Cumbie, 92 Ark. App. 448, 215 S.W.3d 694 (2005).

Attorney's Fees.

This section allows the recovery of attorney's fees where an insurer fails to pay benefits when they become due, but it adds nothing as to the amount of the fees to be allowed. State Farm Mut. Auto. Ins. Co. v. Brown, 48 Ark. App. 136, 892 S.W.2d 519 (1995).

Trial court did not err in granting an insured's motion for attorney fees pursuant to § 23-79-209 because it could not be reasonably argued that the insurer was not a liability insurance company, inasmuch as it issued the insured's automobile liability insurance policy, and it was the underinsured motorist section of the liability insurance policy that the insurer placed in issue by its counterclaim for a declaratory judgment; casualty insurance is part and parcel of liability insurance, and it is required to be offered to the insured as part of its liability insurance. Southern Farm Bureau Cas. Ins. Co. v. Krouse, 2010 Ark. App. 493, 375 S.W.3d 763 (2010).

Compliance.

Insurance company complied with this section where it gave the named insured the opportunity to purchase underinsured motorist coverage by conspicuously including an option for such coverage on the face of the standard policy application. Edens v. Shelter Mut. Ins. Co., 923 F.2d 79 (8th Cir. 1991).

Where there was no provision for underinsured motorist coverage in policy and insurer gave no oral notice that such coverage was available and never sent any written materials describing or offering the coverage, mandate of this section that insurers offer underinsured coverage was not met by mere printing of the term "underinsured motorist" on an application without explanation or mention of it to the insured. Shelter Mut. Ins. Co. v. Bough, 310 Ark. 21, 834 S.W.2d 637 (1992); Shelter Mut. Ins. Co. v. Irvin, 309 Ark. 331, 831 S.W.2d 135 (1992).

To sustain an action against insurer, the insured must prove that insurer failed to fulfill its duty under this section to make underinsured motorist coverage available to him at the time he took out his policy; it is the act of failing to inform an insured about the availability of underinsured motorist coverage that triggers the trial court's implying such coverage by operation of law. Calcagno v. Shelter Mut. Ins. Co., 330 Ark. 802, 957 S.W.2d 700 (1997).

Because a motor vehicle insurance policy did not violate this section by excluding from its definition of underinsured motor vehicle any covered motor vehicle, a passenger who was injured in an accident was not entitled to recover under the policy's underinsured motorist coverage. Humphries v. Nationwide Mut. Ins. Co., 97 Ark. App. 125, 245 S.W.3d 156 (2006).

Consent Clauses.

In cases involving a consent clause, the insured cannot hold the insurer liable, without its consent, upon a judgment obtained in an action in which the insurer was not a party, and whether underinsured motorist coverage or uninsurered motorist coverage is included does not make a difference. Ross v. State Farm Mut. Auto. Ins. Co., 41 Ark. App. 75, 848 S.W.2d 948 (1993).

Coverage.

This section does not broadly specify any class of persons for coverage other than "the insured" and, therefore, does not require that a policy provide coverage to an occupant in a vehicle owned by another person while that vehicle is being driven by the insured. Foster v. Farm Bureau Mut. Ins. Co., 71 Ark. App. 132, 27 S.W.3d 464 (2000).

Although subdivision (a)(3) of this section provides that underinsured coverage must provide coverage for damages from the operator of another vehicle, the parties may agree to extend the underinsured coverage to operation of the insured vehicle by an underinsured driver; where policy language is ambiguous, the court will construe the policy liberally in favor of the insured and strictly against the insurer. Lewis v. Mid-Century Ins. Co., 362 Ark. 591, 210 S.W.3d 113 (2005).

Insurer did not meet its burden of proving that the amount in controversy exceeded $75,000 for an insured's individual claim as required by 28 U.S.C.S. § 1332(a) because before including attorney's fees, the maximum amount the insured could seek was $41,754 under §§ 23-89-202, 23-89-208, and this section,

and to reach $75,000, a court would need to award more than $33,000 in attorney's fees, which seemed unlikely; however, the undisputed facts showed that the value of the insurance at issue, measured by the amount that the insurer would charge for the coverages at issue, exceeded $10,000,000, and thus, the amount in controversy for class claims exceeded $5,000,000, the minimum amount for jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C.S. § 1332(d), and because the insured could not show "to a legal certainty" that the pay-out for the claims of the class would be less than $5,000,000, her motion to remand was denied. Toller v. Sagamore Ins. Co., 558 F. Supp. 2d 924 (E.D. Ark. 2008).

Duty of Insurer.

This section contemplates payment by the tortfeasor's insurance company, and also contemplates a determination of the injured party's damages; there is no directive under this section that the underinsured carrier must investigate and evaluate a claim prior to the payment of liability coverage by the tortfeasor's insurance company. State Farm Mut. Auto. Ins. Co. v. Thomas, 316 Ark. 345, 871 S.W.2d 571 (1994).

After insured's initial rejection of underinsured coverage, insurer was not required to re-notify insured of the availability of underinsured coverage when the insured amended his policy by adding vehicles to the policy. Colonia Underwriters Ins. Co. v. Richardson, 325 Ark. 300, 924 S.W.2d 808 (1996).

Where the plaintiff's parents entered into a contract for automobile insurance and rejected underinsured motorist coverage, the insurance company was not required to offer underinsured motorist coverage to the plaintiff when she was later added to the policy as an additional operator. Majors v. American Premier Ins. Co., 334 Ark. 628, 977 S.W.2d 897 (1998).

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the class members as required by §§ 23-89-202, 23-89-403, 23-89-404, and this section would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Exclusion.

The exclusion for underinsured motor vehicle coverage which provided no coverage for bodily injury to an insured occupying a vehicle not insured under that policy was reasonable because it excluded a material, unassumed risk for which the insurance company could be expected to charge a higher premium, and it would be unfair to ask other insureds to share the cost of increased exposure. Clampit v. State Farm Mut. Auto. Ins. Co., 309 Ark. 107, 828 S.W.2d 593 (1992).

The fact that the legislature chose to specifically require the offering of underinsured-motorist coverage only in conjunction with the issuance of "private passenger automobile liability insurance" policies demonstrates its desire to exclude commercial policies from the requirements of this section. Monday v. Canal Ins. Co., 348 Ark. 435, 73 S.W.3d 594 (2002).

Implied Coverage.

Where the insurer failed to make underinsured coverage available, such coverage was implied by operation of law. Shelter Mut. Ins. Co. v. Irvin, 309 Ark. 331, 831 S.W.2d 135 (1992).

If an insurer fails to comply with this section, a court may imply underinsured motorist coverage by operation of law. Warford v. State Farm Mut. Auto. Ins. Co., 69 F.3d 860 (8th Cir. 1995).

Legislative Intent.

The General Assembly intended, under this section, for an insured to receive the limits of underinsured motorist coverage over and above any recovery from the tortfeasor's carrier if that recovery was not adequate to fully compensate the insured. Shepherd v. State Auto Property & Cas. Ins. Co., 312 Ark. 502, 850 S.W.2d 324 (1993).

The legislature intended underinsured motorist benefits to be provided without regard to the amount of insurance carried by any liable party. Shepherd v. State Auto Property & Cas. Ins. Co., 312 Ark. 502, 850 S.W.2d 324 (1993).

Limits of Recovery.

The injured policyholder should only receive the limits of his underinsured coverage if his total damages equal or exceed that limit plus the amount received from the tortfeasor. Henderson v. Universal Underwriters Ins. Co., 768 F. Supp. 688 (E.D. Ark. 1991).

Under the "difference of limits" or "excess" method of computation of benefits, an insured is not entitled to underinsured motorist benefits when the responsible party's liability insurance limit equals or exceeds the amount of the insured's underinsured coverage; under the "add-on" method of computation of benefits, an insured can receive the limits of his underinsured motorist coverage over and above any recovery from the responsible party if that recovery is not adequate to fully compensate the insured. American Cas. Co. v. Mason, 312 Ark. 166, 848 S.W.2d 392 (1993).

An insured is entitled to recover underinsured motorist coverage benefits for damages sustained which exceed the coverage of the tortfeasor irregardless the amount of the tortfeasor's liability insurance. American Cas. Co. v. Mason, 312 Ark. 166, 848 S.W.2d 392 (1993).

The legislature intended underinsured motorist benefits to be provided without regard to the amount of insurance carried by any liable party. American Cas. Co. v. Mason, 312 Ark. 166, 848 S.W.2d 392 (1993).

Under subsection (a) of this section, both before and after the 1993 amendment, the legislative intent is clear that the inability to obtain the limits of liability coverage is what triggers the availability of underinsured benefits. Birchfield v. Nationwide Ins., 317 Ark. 38, 875 S.W.2d 502 (1994).

This section and § 27-19-605 clearly mandate that a minimum of $25,000 underinsured coverage be offered and not an amount equal to the liability insurance purchased by the insured; therefore, when underinsurance is implied by law under this section, the insured will be limited to the minimum amount referred to in the statute. Ross v. United Servs. Auto. Ass'n, 320 Ark. 604, 899 S.W.2d 53 (1995).

Underinsured coverage applies when the tortfeasor has at least the minimum amount of insurance required by law but not enough to fully compensate the victim, and is designed to provide compensation to the extent of the injury, subject to the policy limits. Southern Farm Bureau Cas. Ins. Co. v. Pettie, 54 Ark. App. 79, 924 S.W.2d 828 (1996).

For purposes of determining whether 28 U.S.C.S. § 1332(a) amount in controversy requirements, a district court ignored medical expenses included in a $50,000 payment that was tendered by a third party insurer after an insured's complaint against an insurance company was filed, but before the case was removed from a state court. Pursuant to subsection (d) of this section, the insured could not seek to recover payment of those medical expenses from the company. Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Summary judgment was properly awarded to an insurer in insureds' action for UIM coverage under subdivision (a)(3) of this section because the policy language at issue was not ambiguous; under the terms of the policy, UIM coverage was not triggered until all policy limits were exhausted. Corn v. Farmers Ins. Co., 2013 Ark. 444, — S.W.3d — (2013).

Rejection of Coverage.

The rejection of underinsured motorist coverage obtained from the plaintiff in 1987 was effective and a second or subsequent rejection was not required by the 1991 amendments nor was one required when a vehicle was substituted for the original vehicle. Warford v. State Farm Mut. Auto. Ins. Co., 871 F. Supp. 1085 (W.D. Ark. 1994), aff'd, 69 F.3d 860 (8th Cir. 1995).

An attempt to deny coverage before the insured has been fully compensated would not be permitted by the statute. Shelter Mut. Ins. Co. v. Williams, 69 Ark. App. 35, 9 S.W.3d 545 (2000).

Where insured was injured when a car crashed into the wall of her business, the trial court properly granted summary judgment for the insurance company which denied the insured underinsured motorist coverage and personal injury

protection coverage based upon the clear and unambiguous terms of the policy's business premises exclusion; moreover, waiver was not available to extend the coverage merely because the insurer's agent thought coverage might be available. Harasyn v. St. Paul Guardian Ins. Co., 349 Ark. 9, 75 S.W.3d 696 (2002).

Stacking.

Because this section requires the insurance company to offer as a minimum underinsured coverage for each car, when an insured has more than one car covered with the insurance company, the insured may stack the minimum coverages that should have been offered. Ross v. United Servs. Auto. Ass'n, 320 Ark. 604, 899 S.W.2d 53 (1995).

Although stacking of UIM coverages is not prohibited by statute, it may be precluded by an applicable anti-stacking clause in the policy. Shelter Mut. Ins. Co. v. Williams, 69 Ark. App. 35, 9 S.W.3d 545 (2000).

Stacking was denied to passenger where his policy plainly provided that it would apply "only as excess insurance over any other similar insurance available to the insured as primary insurance" and the vehicle owner's insurance was considered primary. Shelter Mut. Ins. Co. v. Williams, 69 Ark. App. 35, 9 S.W.3d 545 (2000).

Summary judgment in favor of the insurers on the administratrix's action for recovery of underinsured motorist (UIM) benefits was proper as the insurance provisions of the policies issued by the insurers were unambiguously incorporated into the UIM endorsement, did not violate this section, and did not violate public policy; the insurers were allowed to prohibit stacking of benefits. Couch v. Farmers Ins. Co., 375 Ark. 255, 289 S.W.3d 909 (2008).

Time Limitations.

A policyholder may recover against the insurer even though the statute of limitations has run in favor of the uninsured motorist and even though the plaintiff has dismissed his suit against the uninsured motorist with prejudice. Southern Farm Bureau Cas. Ins. Co. v. Pettie, 54 Ark. App. 79, 924 S.W.2d 828 (1996).

The statute of limitations for an insurance agent's negligence commences at the time the negligent act occurs. Calcagno v. Shelter Mut. Ins. Co., 55 Ark. App. 321, 934 S.W.2d 548 (1996), aff'd, 330 Ark. 802, 957 S.W.2d 700 (1997).

Cited: Weigel v. Farmers Ins. Co., 356 Ark. 617, 158 S.W.3d 147 (2004).

23-89-210. Premium reduction for college graduates.

(a) Any schedule of rates or rating plan for automobile liability and physical damage insurance submitted to or filed with the Insurance Commissioner shall provide for an appropriate reduction in premium charges for those insured under twenty-five (25) years of age who have graduated from a college or university, and whose cumulative scholastic records show that the insured attained one (1) of the following:

(1) If letter grades are used, a grade average of "B" or higher; or

(2) At least a 3-point average on a 4-point scale (or equivalent).

(b) All insurance companies writing automobile liability and physical damage insurance in Arkansas shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.

(c) This reduction in premium charges shall not apply to those insureds who qualify for a premium reduction due to marriage.

History. Acts 1997, No. 1184, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 23-89-201 — 23-89-209 and 23-89-211 — 23-89-216 may not apply to this section which was enacted subsequently.

23-89-211. Total loss settlements.

(a) If an insurer settles a claim for damages to an automobile as a total loss to its own insured or a person having a claim against its insured, the insurer shall include with the payment for the loss:

(1) All applicable taxes, including sales taxes and fees as required under Rule and Regulation 43 of the State Insurance Department; and

(2) An itemized list stating the amount of the claim attributable to the value of the automobile and attributable to the sales tax on an automobile of that value.

(b) When settling a claim against an insured for damages to an automobile as a total loss, the insurer will take into consideration all applicable taxes, license fees, and other fees.

(c) An insurer may not abandon salvage to a towing or storage facility in lieu of payment of towing and storage fees without the consent of the facility and the insured.

(d) The failure of an insurer to comply with the requirements of subsections (a)-(c) of this section shall be considered an unfair claims settlement practice under § 23-66-206(13).

History. Acts 1999, No. 1291, § 1; 2001, No. 1553, § 52; 2003, No. 458, § 1; 2005, No. 2211, § 8.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Payment of Taxes with Total Losses, 26 U. Ark. Little Rock L. Rev. 479.

23-89-212. Motor vehicle liability insurance — Extraterritorial provision.

(a)(1) Motor vehicle liability insurance applies to the amounts which the owner is legally obligated to pay as damages because of accidental bodily injury and accidental property damage arising out of the ownership or operation of a motor vehicle if the accident occurs in the United States, its possessions, or Canada.

(2) Motor vehicle liability insurance must afford limits of liability not less than those required under the financial responsibility laws of this state.

(b) If the accident occurs outside this state but in the United States, its possessions, or Canada and if the limits of liability of the financial responsibility or compulsory insurance laws of the applicable jurisdiction exceed the limits of liability of the financial responsibility laws of this state, the motor vehicle liability insurance is deemed to comply with the limits of liability of the laws of the applicable jurisdiction.

(c) For purposes of this section, "motor vehicle" is defined as provided in § 27-14-207.

History. Acts 2001, No. 309, § 2.

RESEARCH REFERENCES

ALR. Conflict of laws in determination of coverage under automobile liability insurance policy. 110 A.L.R.5th 465.

CASE NOTES

Household Exclusion.

Policy's household exclusion was enforceable in a claim arising from an Oklahoma accident because subsection (b) of this section mandated that a policy had to comply with laws where the insured was driving, and, under Okla. Stat. Tit. 47, § 7-601(B)(3), Oklahoma law only required nonresident operators of vehicles registered out of state to comply with the registering state's compulsory liability laws. Cross v. State Farm Mut. Auto. Ins. Co., 2011 Ark. App. 62, — S.W.3d — (2011).

23-89-213. Proof of insurance.

(a) All insurance companies authorized to do business in this state and issuing automobile liability insurance policies in this state shall furnish to the insured a proof-of-insurance card.

(b) The proof-of-insurance card or any temporary proof of insurance issued by the insurance company shall contain the following information:

(1) The name, address, telephone number, and National Association of Insurance Commissioners' code number of the insurer;

(2) The name and telephone number of the local agent through whom the policy was issued, if any, or a blank space where a local agent's name may be stamped or filled in;

(3) The policy number;

(4) The effective date of the insurance policy coverage and the expiration date of the insurance policy coverage;

(5) The vehicle identification number and a brief description of the insured vehicle, except that an insurance card for fleet vehicles is not required to list a separate vehicle identification number for each vehicle in the fleet;

(6) The name and address of the insured person; and

(7) The designation "Excluded Driver(s)" if a person or persons are excluded from coverage under the insurance policy.

(c) At the discretion of the Insurance Commissioner, any person or insurance company that violates this section may be subject to the following penalties:

(1) Suspension or revocation of the person's or insurer's certificate of authority to transact insurance in this state under § 23-63-213; or

(2) A monetary penalty in lieu of revocation or suspension as provided under § 23-63-213.

History. Acts 2001, No. 1828, § 1;

2003, No. 998, § 1; 2005, No. 506, § 47; 2007, No. 485, § 1; 2013, No. 355, § 15.

Amendments. The 2013 amendment substituted "Proof of insurance" for "Premium delinquencies" in the section heading.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-89-214. Motor vehicle liability insurance — Prohibition regarding step-downs.

No motor vehicle liability insurance policy issued or delivered in this state shall contain a provision that converts the limits for bodily injury or property damage to lower limits in the event that the insured motor vehicle is involved in an accident while it is being driven by a driver other than the insured.

History. Acts 2001, No. 1438, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-89-215. Priority of primary motor vehicle liability insurance coverage.

The liability insurance policy covering a motor vehicle is primary when the motor vehicle is driven by:

(1) An insured; or

(2) Any other person:

(A) Not excluded from coverage under the policy;

(B) With the permission of an insured; and

(C) When the use of the motor vehicle is within the scope of the permission granted by an insured.

History. Acts 2007, No. 373, § 1.

23-89-216. Notice concerning use of insurance proceeds.

(a) When making payment to a third party on a claim under a motor vehicle insurance policy for damage to a motor vehicle, a motor vehicle liability insurer shall provide a written notice to the third-party claimant in substantially the following form:

"Failure to use the insurance proceeds in accordance with a security agreement between you and a lienholder, if any, may constitute the criminal offense of defrauding a secured creditor in violation of Arkansas Code § 5-37-203. If you have any questions, contact your lienholder."

(b) The written notice required by subsection (a) of this section may be provided by including the written notice on each written loss estimate prepared in connection with the claim.

History. Acts 2009, No. 485, § 2; 2009, No. 1452, § 1.

Amendments. The 2009 amendment, in the introductory language of (a), inserted "to a third-party" and substituted "third-party claimant" for "insured."

Subchapter 3 — Automobile Liability Insurance — Cancellation and Nonrenewal

SECTION.
23-89-301. Definitions.
23-89-302. Consideration of railroad accident prohibited.
23-89-303. Grounds for cancellation.
23-89-304. Time for notice of cancellation.
23-89-305. Notice required before renewal or nonrenewal — Inapplicability to commercial policies.
23-89-306. Proof of mailing of notices.
23-89-307. Eligibility for automobile liability assigned risk plan.
23-89-308. Nonliability of commissioner and insurer.

Effective Dates. Acts 1969, No. 333, § 8: Mar. 27, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relative to the cancellation and termination of automobile liability, physical damage and collision insurance are inadequate to establish and protect the respective rights of the insurer and the policyholder and that this Act is immediately necessary to correct this inadequacy. Therefore an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 66, § 12: Feb. 6, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 675, § 4: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law on the time for notice of cancellation of automobile liability, physical damage and collision insurance may permit the inequitable recovery of insurance monies by parties who have received proper notice of cancellation and failed to act on such notice in a timely manner; that the present law has a detrimental impact on rates charged for this insurance and that this Act is immediately necessary to eliminate the deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 127, § 2: Feb. 21, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the law provides no notice of cancellation of a motor vehicle insurance policy to a lienholder that is not a bank or other lending institution; that the liens on motor vehicles of good faith lenders other than banks and lending institutions are in jeopardy of becoming uninsured for lack of notice of cancellation of the owner's policy; and that the passage of this act is immediately necessary to ensure the ability to protect motor vehicle liens from losing insurance coverage due to lack of notice of

cancellation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-89-301. Definitions.

As used in this subchapter:

(1) "Automobile collision coverage" includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset;

(2) "Automobile liability coverage" includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorists coverage;

(3) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset;

(4) "Nonpayment of premium" means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(5) "Policy" means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state; and

(6)(A) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

(B) However, for the purposes of this subchapter:

(i) Any policy with a policy period or term of less than six (6) months shall be considered as if written for a policy period or term of six (6) months; and

(ii) Any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving twenty (20) days' notice of cancellation prior to the anniversary date. This cancellation shall not be subject to any other provisions of this subchapter.

History. Acts 1969, No. 333, § 1; A.S.A. 1947, § 66-4007; Acts 2007, No. 826, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Bassett, Survey of Arkansas Law: Insurance, 2 U. Ark. Little Rock L.J. 247.

CASE NOTES

Renewal.

Because the insured's insurance policy was for a term of less than one year, the insurer was not required to cancel it in order for it to terminate, and the trial court correctly found that it expired by its own terms when the insured failed to renew it. Stanley Wood Chevrolet-Pontiac, Inc. v. Progressive Cas. Ins. Co., 79 Ark. App. 37, 83 S.W.3d 445 (2002).

Cited: Farmers Ins. Co. v. Hall, 263 Ark. 734, 567 S.W.2d 296 (1978).

23-89-302. Consideration of railroad accident prohibited.

No automobile insurer shall use a railroad accident occurring while the insured engineer, conductor, fireman, or brakeman was performing his or her duties as an engineer, conductor, fireman, or brakeman of a railroad in determining the rates or cancelling the automobile liability coverage, the automobile collision coverage, or the automobile physical damage coverage of the insured engineer, conductor, fireman, or brakeman, as those types of coverage are defined in § 23-89-301, where the insurance covers and protects the insured and any motor vehicle registered or principally garaged in this state.

History. Acts 1979, No. 393, § 2; A.S.A. 1947, § 66-4008.1.

23-89-303. Grounds for cancellation.

(a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

(1) Nonpayment of premium;

(2) The named insured or any driver of the insured vehicle shall be convicted of:

(A) Driving while intoxicated;

(B) Homicide or assault arising out of the use of a motor vehicle; or

(C) Three (3) separate convictions of speeding or reckless driving, or any combination of the two (2) during the policy period, including three (3) months prior to the effective date of the policy;

(3) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under this policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;

(4) Fraud or misrepresentation of a material fact, the knowledge of which would have caused the insurer to decline to issue a policy; or

(5) Nonpayment of membership dues when they are a requirement in the bylaws, agreements, or other legal instruments of a company before issuance and maintenance of a policy under this subchapter.

(b) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(c) This section shall not apply to nonrenewal.

(d)(1) However, an insurer shall not be able to rescind bodily injury or property damage liability coverage under an insurance policy for fraud or misrepresentation with respect to any injury to a third party when suffered as a result of the insured's negligent operation of a motor vehicle.

(2) Nothing in this subsection is intended to negate an insurer's right to rescind other coverages in the insurance policy purchased by the insured.

History. Acts 1969, No. 333, § 2; A.S.A. 1947, § 66-4008; Acts 1993, No. 457, § 1; 2001, No. 1555, § 16.

Cross References. Effect of administrative revocation on motor vehicle insurance, § 27-22-106.

RESEARCH REFERENCES

Ark. L. Notes. Copeland, A Brief Survey of Some Important 1991 and 1992 Insurance Law Decisions, 1992 Ark. L. Notes 85.

CASE NOTES

Analysis

Common Law Right of Rescission.
Fraud.
Late Payment.
Nonpayment.
Severance of Provisions.

Common Law Right of Rescission.

Arkansas compulsory insurance statutes have not abrogated the insurer's common law right to rescission when: (1) only the insurer and the insured are involved in a noncompulsory provision of the policy, and (2) the policy has been in existence less than 60 days, unless it is a renewal policy. Ferrell v. Columbia Mut. Ins. Cas. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

Fraud.

While an insurance company has the right to rescind coverages based on fraud by the insured without consent of the insured or a declaratory judgment, this right is unavailable when third-party claims are at issue. Douglass v. Nationwide Mut. Ins. Co., 323 Ark. 105, 913 S.W.2d 277 (1996).

The court declined to apply the 60-day period specified in this section and § 23-89-304 as a limitations period for rescission based on fraud. Douglass v. Nationwide Mut. Ins. Co., 323 Ark. 105, 913 S.W.2d 277 (1996).

Late Payment.

Premium payment made two months after cancellation renewed, rather than reinstated, the policy. Mid-Century Ins. Co. v. Miller, 55 Ark. App. 303, 935 S.W.2d 302 (1996).

Nonpayment.

Where the sole reason for the cancellation was nonpayment of premium, the chancellor's finding that a sufficient premium was in fact paid invalidated the stated ground for the cancellation and thereby rendered moot the issue of whether the cancellation was also statutorily prohibited because it occurred within six months of the policy's issuance.

Equity Fire & Cas. Co. v. Needham, 323 Ark. 22, 912 S.W.2d 926 (1996).

Severance of Provisions.

Courts may sever compulsory provisions of an insurance policy from noncompulsory provisions and permit rescission only as to noncompulsory provisions. Ferrell v. Columbia Mut. Ins. Cas. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

Cited: Farmers Ins. Co. v. Hall, 263 Ark. 734, 567 S.W.2d 296 (1978); Southern Farm Bureau Cas. Ins. Co. v. Easter, 374 Ark. 238, 287 S.W.3d 537 (2008).

23-89-304. Time for notice of cancellation.

(a)(1) No notice of cancellation of a policy to which § 23-89-303 applies and no notice of cancellation of a policy which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered shall be effective unless mailed or delivered by the insurer to the named insured.

(2) No notice of cancellation to any named insured shall be effective unless mailed or delivered at least twenty (20) days prior to the effective date of cancellation, provided that when cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given.

(b) No notice of cancellation to any person or entity shown on the policy and having a lien on the insured's automobile shall be effective unless mailed or delivered by the insurer:

(1) To the person or entity; and

(2)(A) At least twenty (20) days prior to the termination of the insurance protecting the interest of the person or entity.

(B) However, when cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason for the cancellation shall be given.

(c) Failure to properly notify a named insured or failure to properly notify a person or entity shown on the policy and having a lien on the insured's automobile shall have no effect on a party properly notified.

(d) This section shall not apply to nonrenewals.

History. Acts 1969, No. 333, § 3; 1973, No. 66, § 10; 1975, No. 528, § 1; A.S.A. 1947, § 66-4009; Acts 1989, No. 675, § 1; 2007, No. 127, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Copeland, A Brief Survey of Some Important 1991 and 1992 Insurance Law Decisions, 1992 Ark. L. Notes 85.

Ark. L. Rev. Note, State Farm Fire and Casualty Company v. Stockton, 295 Ark. 560, 750 S.W.2d 945 (1988), 42 Ark. L. Rev. 1124.

CASE NOTES

Analysis

In General.
Construction.
Common Law Right of Rescission.
Fraud.
Insured's Address.
Lending Institution.
Severance of Provisions.
Ten-day Limit.

In General.

By the plain language of this section, an insurance company must give notice of cancellation to both the insured and to any bank or other lending institution having a lien on the named insured's automobile for cancellation to be effective. State Farm Fire & Cas. Co. v. Stockton, 295 Ark. 560, 750 S.W.2d 945 (1988).

Construction.

Strict compliance with this section is mandated, not substantial compliance, and the error in setting a premature cancellation date flies in the face of that basic requirement. Grubbs v. Credit Gen. Ins. Co., 327 Ark. 479, 939 S.W.2d 290 (1997).

Common Law Right of Rescission.

Arkansas compulsory insurance statutes have not abrogated the insurer's common law right to rescission when: (1) only the insurer and the insured are involved in a noncompulsory provision of the policy, and (2) the policy has been in existence less than 60 days, unless it is a renewal policy. Ferrell v. Columbia Mut. Ins. Cas. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

Fraud.

The court declined to apply the 60-day period specified in § 23-89-303 and this section as a limitations period for rescission based on fraud. Douglass v. Nationwide Mut. Ins. Co., 323 Ark. 105, 913 S.W.2d 277 (1996).

Insured's Address.

Whether the insurer had knowledge or should have known that the insured's address on the application was incorrect is a material question of fact for the jury's determination which should have been answered before the trial court determined whether sufficient notice of cancellation was given. Wozniak v. Colonial Ins. Co., 46 Ark. App. 331, 885 S.W.2d 902 (1994).

Lending Institution.

Term "lending institution" means an organization that is primarily engaged in the lending business, and if the organization's credit and lending operations, however extensive and regularly carried on, is an incidental function of its main business, then the organization is not a lending institution; thus, summary judgment was properly granted to insurer in a case where automobile dealer sought to recover under a cancelled motor vehicle policy as the lien holder and loss payee because the notice requirements of this section did not apply since the dealer was not a lending institution where its primary function was not lending (decided prior to the 2007 amendment). John Gibson Auto Sales v. Direct Ins. Co., 97 Ark. App. 192, 245 S.W.3d 700 (2006).

Severance of Provisions.

Courts may sever compulsory provisions of an insurance policy from noncompulsory provisions and permit rescission only as to noncompulsory provisions. Ferrell v. Columbia Mut. Ins. Cas. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

Ten-day Limit.

Billing notice for insured's quarterly installment payment, sent twenty-seven days before the quarterly payment was due, failed to satisfy the ten-day cancellation notice requirement of subdivision (a)(2). Parker v. Southern Farm Bureau Cas. Ins. Co., 326 Ark. 1073, 935 S.W.2d 556 (1996).

Cancellation of an insurance policy was ineffective because it provided the insured with only eight days' notice. Grubbs v. Credit Gen. Ins. Co., 327 Ark. 479, 939 S.W.2d 290 (1997).

23-89-305. Notice required before renewal or nonrenewal — Inapplicability to commercial policies.

(a)(1) Except as provided in subsection (e) of this section, the insurer shall give either a written notice of nonrenewal or an offer of renewal at least thirty (30) days before the expiration of the policy's existing term.

(2)(A) The insurer shall send the insured a written notice and the insurance producer written or electronic notice of the offer of renewal under subdivision (a)(1) of this section.

(B) The notice required under subdivision (a)(2)(A) of this section shall:

(i) State the new premium for the renewal policy; and

(ii) Provide a description of any change in deductible or policy provisions in the renewal policy.

(b)(1) This section does not apply in case of nonpayment of premium.

(2) However, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) Unless a statement of the grounds for nonrenewal accompanies or is included in the notice of nonrenewal, the notice of nonrenewal shall state or be accompanied by a statement that the insurer shall specify the grounds for the nonrenewal upon written request of the named insured if the request is mailed or delivered to the insurer not less than fifteen (15) days before the effective date of the nonrenewal.

(d) Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.

(e) This section does not apply to the sixty-day notice requirement for the renewal or nonrenewal of a commercial policy governed by § 23-79-307(7).

History. Acts 1969, No. 333, § 4; 1971, No. 187, § 1; A.S.A. 1947, § 66-4010; Acts 2003, No. 1790, § 3; 2009, No. 726, § 46.

Amendments. The 2009 amendment rewrote the section heading; inserted "Except as provided in subsection (e) of this section" in (a)(1), inserted (a)(2)(B), and redesignated accordingly; rewrote (c); added (e); and made related and minor stylistic changes.

Cross References. Effect of administrative revocation on motor vehicle insurance, § 27-22-106.

CASE NOTES

Constitutionality.

Because the point on appeal was not developed legally or factually, this was enough to affirm the trial court in its holding that subsection (a) of this section and § 23-89-306 were constitutional as applied to the facts; the court refused to consider the issue because the insured failed to cite to any legal authority as required. Johnson v. Encompass Ins. Co., 355 Ark. 1, 130 S.W.3d 553 (2003).

Cited: Farmers Ins. Co. v. Hall, 263 Ark. 734, 567 S.W.2d 296 (1978).

23-89-306. Proof of mailing of notices.

Proof of mailing of notice of cancellation, or of intention not to renew, or of grounds for cancellation to the named insured at the address shown in the policy shall be sufficient proof of notice.

History. Acts 1969, No. 333, § 5; A.S.A. 1947, § 66-4011.

CASE NOTES

Analysis

Constitutionality.
Illustrative Cases.
Incorrect Address.

Constitutionality.

This section provides a measure of protection to the insured by requiring notice, and even if the use of the U.S. Postal Service could be considered state action, the statute's use of regular, non-certified mail is rationally related to a governmental purpose — a way to protect insureds from cancellation of their policies with no notice; the statute's requirement of notification through the U.S. Postal Service does not, however, rise to the level of state action and no due process violation occurred when the legislature enacted this statute, nor does such a constitutional violation occur from utilizing the U.S. mail to provide notice. Johnson v. Encompass Ins. Co., 355 Ark. 1, 130 S.W.3d 553 (2003).

Illustrative Cases.

Proof of mailing of a notice of cancellation on an automobile liability policy was sufficient to establish notice of cancellation, as a matter of law, when the insured denied receipt of the notice. Atlanta Cas. Co. v. Swinney, 315 Ark. 565, 868 S.W.2d 501 (1994).

The affidavit of an insurance company employee was sufficient to establish that a notice of cancellation was mailed to the insured at the address shown in the policy, notwithstanding that there was no indication that the employee was the person who actually mailed the notice. Shoffey v. Progressive Northwestern Ins. Co., 70 Ark. App. 458, 20 S.W.3d 424 (2000).

Insureds had no protected property right in any coverage beyond the lapse date and, thus, there was no protected property or liberty interest that could have given rise to a due process claim, as contended by the insureds, who argued that their rights were violated when the insurer failed to give them actual notice of non-renewal; there was no state action because the action was taken by an insurance company and the use of the United States mail to give notice under this section did not rise to the level of state action. Johnson v. Encompass Ins. Co., 355 Ark. 1, 130 S.W.3d 553 (2003).

Incorrect Address.

Whether the insurer had knowledge or should have known that the insured's address on the application was incorrect is a material question of fact for the jury's determination which should have been answered before the trial court determined whether sufficient notice of cancellation was given. Wozniak v. Colonial Ins. Co., 46 Ark. App. 331, 885 S.W.2d 902 (1994).

23-89-307. Eligibility for automobile liability assigned risk plan.

(a) When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which § 23-89-305 applies, the insurer shall notify the named insured of his or her possible eligibility for automobile liability insurance through the automobile liability assigned risk plan.

(b) The notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

History. Acts 1969, No. 333, § 6; A.S.A. 1947, § 66-4012.

CASE NOTES

Cited: Cheatham v. 100% Certain Underwriters at Lloyds, 783 F. Supp. 1174 (E.D. Ark. 1991).

23-89-308. Nonliability of commissioner and insurer.

There shall be no liability on the part of and no cause of action of any nature shall arise against the Insurance Commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to the grounds for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the grounds for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

History. Acts 1969, No. 333, § 7; A.S.A. 1947, § 66-4013.

Subchapter 4 — Uninsured Motorist Coverage

SECTION.
23-89-401. Definition.
23-89-402. Applicability of insurer's insolvency protection.
23-89-403. Bodily injury coverage required.
23-89-404. Uninsured motorist property damage coverage.
23-89-405. Subrogation of insurer making payment.

Effective Dates. Acts 1983, No. 732, § 2: Jan. 1, 1984.

Acts 1985, No. 713, § 2: July 1, 1986.

Acts 1995, No. 527, § 6: Mar. 6, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present insurance laws should be clarified to indicate that once an insured has rejected certain automobile insurance that the insurer should not be required thereafter to notify the insured of the availability of the rejected coverage at such time as the coverage not rejected is renewed, reinstated, substituted, amended, or replaced; that this act so provides; and this act should go into effect immediately in order to clarify the law as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1334, § 5: became law without Governor's signature. Noted Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present insurance laws should be clarified to indicate that once an insured has rejected bodily injury coverage that the insurer should not be required thereafter to notify the insured of the availability of the rejected coverage at such time as the coverage not rejected is renewed, reinstated, substituted, amended, or replaced; that this act so provides; and this act should go into effect immediately in order to clarify the law as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Punitive damages as within coverage of uninsured or underinsured motorist insurance. 54 A.L.R.4th 1186.

Right of insured precluded from recovery against owner or operator of uninsured motor vehicle because governmental immunity to recover uninsured motorist benefits. 55 A.L.R.4th 806.

Am. Jur. 7 Am. Jur. 2d, Auto. Ins., § 293 et seq.

Ark. L. Rev. Uninsured Motorist Coverage: Litigation and Problems, 22 Ark. L. Rev. 152.

Uninsured Motorist Coverage — A Suggested Approach to Consistency, 23 Ark. L. Rev. 167.

Insurance — The Burden of Proving Noninsurance Under Uninsured Motorist Statute, 23 Ark. L. Rev. 292.

Insurance — Effect of Workmen's Compensation on Uninsured Motorist Coverage, 23 Ark. L. Rev. 498.

Insurance — Uninsured Motorist Coverage — Set-Off of Amounts Payable Under Medical Payments Coverage, 25 Ark. L. Rev. 548.

C.J.S. 45 C.J.S., Ins., § 896.1.

CASE NOTES

Applicability.

Uninsured motorist coverage does not apply to an insured killed while driving his employer's uninsured vehicle when liability is based solely on the workers' compensation statute rather than any vehicle-related negligence. Tuggle v. Shelter Mut. Ins. Co., 961 F.2d 794 (8th Cir. 1992).

Where plaintiff was the survivor of employee who, while driving his employer's truck in the course of employment, hit another vehicle and was killed, and where employer had no workers' compensation insurance, plaintiff could not substitute the employee's personal uninsured motorist coverage for the employer's lack of workers' compensation insurance. Tuggle v. Shelter Mut. Ins. Co., 961 F.2d 794 (8th Cir. 1992).

Cited: State Farm Mut. Auto. Ins. Co. v. Lindsey, 54 Ark. App. 390, 926 S.W.2d 850 (1996).

23-89-401. Definition.

For the purposes of automobile liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle registered or principally garaged in this state, unless the context otherwise requires, "uninsured motor vehicle" shall be deemed to include, subject to the terms and conditions of the coverage, an insured motor vehicle when the liability insurer thereof is unable to make payment with respect to the legal liability of its insured with the limits specified therein because of insolvency.

History. Acts 1965, No. 464, § 2; A.S.A. 1947, § 66-4004.

CASE NOTES

Analysis

Elective Coverage.
Set-Off.
Uninsured Motorist.

Elective Coverage.

By terms of the Arkansas Uninsured Motorist Statute, uninsured motorist coverage is elective rather than mandatory. Automobile Club Inter-Insurance Exch. v. State Farm Mut. Auto. Ins. Co., 302 Ark. 78, 787 S.W.2d 237 (1990).

Set-Off.

Trial court did not err in denying set-off for the disability payments made to insured by his insurer under its disability provision where the jury heard testimony from insured and his wife about the disabling effects of his injuries as well as the likelihood that he would continue to suffer from them and received evidence that insurer had paid disability benefits to insured; the jury could have taken that proof into account in reaching its verdict. State Farm Mut. Auto. Ins. Co. v. Rose, 52 Ark. App. 175, 916 S.W.2d 764 (1996).

Uninsured Motorist.

A motorist who carries at least the minimum amount of insurance required by the Motor Vehicle Safety Responsibility Act does not become an uninsured motorist if the policy limits become exhausted. Payne v. Farm Bureau Mut. Ins. Co., 298 Ark. 540, 768 S.W.2d 543 (1989).

Cited: Vaught v. State Farm Fire & Casualty Co., 413 F.2d 539 (8th Cir. 1969); Shelter Mut. Ins. Co. v. Toney, 300 Ark. 89, 776 S.W.2d 362 (1989).

23-89-402. Applicability of insurer's insolvency protection.

(a) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect when the liability insurer of the tortfeasor becomes insolvent within one (1) year after an accident.

(b) Nothing in this section shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided in this subchapter.

History. Acts 1965, No. 464, § 3; A.S.A. 1947, § 66-4005.

CASE NOTES

Cited: Vaught v. State Farm Fire & Casualty Co., 413 F.2d 539 (8th Cir. 1969).

23-89-403. Bodily injury coverage required.

(a)(1) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto and is not less than limits described in § 27-19-605, under provisions filed with and approved by the Insurance Commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

(2) However, the coverage required to be provided under this section shall not be applicable when any insured named in the policy has rejected the coverage in writing, and this rejection shall continue until withdrawn in writing by the insured.

(3)(A) Should a named insured or applicant purchase third-party liability coverage in greater limits than the minimum provided in § 27-19-605, the insurer shall have available and the agent shall offer a named insured or applicant coverage required under this section in limits up to his or her third-party liability limits.

(B) No insurer shall be required to offer, provide, or make available coverage conforming to this section in connection with an excess policy, umbrella policy, or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, or use of a specifically identified motor vehicle.

(C)(i) An insured or applicant not desiring to purchase higher limits shall reject the increased limits in writing on the application for insurance coverage, although agents must offer the increased limits to all new applicants for insurance on and after the passage of this act.

(ii) The requirement for written rejection shall be applicable to new business written on and after January 1, 2000.

(iii) For an existing business, insurers shall provide at the next two (2) renewals after the passage of this act notice that such increased limits are available.

(D) When an existing-named insured has coverage under this section less than the insured's third-party liability limits, that coverage shall not change on July 30, 1999, unless a named insured requests in writing to purchase the higher limits.

(b) After a named insured or applicant for insurance rejects this coverage, the insurer or any of its affiliates shall not be required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of such coverage.

History. Acts 1965, No. 464, § 1; 1977, No. 532, § 1; 1983, No. 732, § 1; A.S.A. 1947, § 66-4003; Acts 1995, No. 527, § 2; 1995, No. 1334, § 1; 1997, No. 203, § 1; 1999, No. 899, § 1; 2001, No. 1276, § 1.

Publisher's Notes. In reference to the term "passage of this act" in (a)(3), Acts 1999, No. 899, which added this language, was signed by the Governor on March 29, 1999, and became effective July 30, 1999.

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Ark. L. Notes. Copeland, A Brief Survey of Some Important 1990 Insurance Law Decisions, 1991 Ark. L. Notes 75.

Ark. L. Rev. Construction of this section through American National Property and Casualty Co. v. Ellis, 315 Ark. 524, 868 S.W.2d 469 (1994), 47 Ark. L. Rev. 789.

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CASE NOTES

Analysis

In General.
Purpose.
Applicability.
Automobiles.
Legislative Intent.
Liability of Insurer.
Policy Provisions.
—Exclusions.
—Reduction of Coverage.
Recoveries.
Rejection.
Uninsured Motorist or Vehicle.

In General.

This section does not provide for personal insurance as opposed to vehicle coverage; instead, it provides automobile liability insurance coverage with respect to the ownership, maintenance, or use of any motor vehicle registered or principally garaged in this state. Crawford v. Emcasco Ins. Co., 294 Ark. 569, 745 S.W.2d 132 (1988); First Sec. Bank v. Doe, 297 Ark. 254, 760 S.W.2d 863 (1988).

This section requires uninsured motorist coverage be provided an employee using his employer's vehicle which is insured with uninsured motorist coverage. First Sec. Bank v. Doe, 297 Ark. 254, 760 S.W.2d 863 (1988).

Purpose.

The purpose of providing the mandatory offering of uninsured motorist coverage was to provide those who purchased liability insurance with protection for injuries caused by persons who did not purchase liability coverage. Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972).

The purpose of this section is to put the injured party in as good position as it would have been in had the uninsured motorist been minimally insured as required by statute. Youngman v. State Farm Mut. Auto. Ins. Co., 334 Ark. 73, 971 S.W.2d 248 (1998).

Applicability.

The purpose of this section was to require the same amount of coverage to one injured by the negligence of a motorist who carries no liability insurance as would be available had the motorist had the minimum coverage necessary to meet the requirements of the Motor Vehicle Safety Responsibility Act, set out in § 27-19-605. Aetna Ins. Co. v. Smith, 263 Ark. 849, 568 S.W.2d 11 (1978).

The legislature's intent was that uninsured motorist coverage should apply only where injury is the result of a collision involving the insured's car and a car owned by an uninsured motorist and that uninsured motorist coverage should not apply where the accident involves the insured's car only; therefore, that portion of the insured motorist coverage policy which denied recovery to "covered" persons injured by vehicles owned by themselves or their families was not void as against public policy. Davis v. Bean, 804 F.2d 1018 (8th Cir. 1986).

As a matter of law, uninsured motorist coverage in a policy covers only accidents caused by drivers of uninsured automobiles. Williams v. Shelter Mut. Ins. Co., 315 Ark. 701, 870 S.W.2d 387 (1994).

A garage owner's liability insurance policy acts also as an automobile liability insurance coverage and a garage owner should have been offered the opportunity to purchase uninsured motorist coverage. Columbia Mut. Ins. Co. v. Estate of Baker, 65 Ark. App. 22, 984 S.W.2d 829 (1999).

This section, which requires a written waiver of coverage, did not apply to insured's claim that summary judgment was improperly granted to insurer based on a named-driver provision where the insured had not provided a written waiver of uninsured motorist coverage resulting from the named-driver exclusion; the statute was modified to require the written waiver only after the insured executed the exclusion. Castaneda v. Progressive Classic Ins. Co., 357 Ark. 345, 166 S.W.3d 556 (2004).

Automobiles.

The term "motorcycle" was not recognized as included in the word "automobile" under Arkansas laws. Phillips ex rel. Phillips v. Midwest Mut. Ins. Co., 329 F. Supp. 853 (W.D. Ark. 1971).

Legislative Intent.

The General Assembly did not intend that rejection of uninsured motorist coverage in one insurance contract be binding in a subsequent one. American Nat'l Property & Cas. Co. v. Ellis, 315 Ark. 524, 868 S.W.2d 469 (1994).

Notably missing from this section are the words "private passenger" as a modifier of the term "automobile liability insurance"; the fact that the legislature chose to specifically require the offering of underinsured-motorist coverage only in conjunction with the issuance of "private passenger automobile liability insurance" policies demonstrates its desire to exclude commercial policies from the requirements of § 23-89-209. Monday v. Canal Ins. Co., 348 Ark. 435, 73 S.W.3d 594 (2002).

Liability of Insurer.

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the class members as required by § 23-89-202, this section, §§ 23-89-404, and 23-89-209, would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Policy Provisions.

"Other insurance coverage" clause was not violative of this section whether or not the insurance policies were carried by the same company or different companies. Treece v. Home Ins. Co., 295 F. Supp. 262 (E.D. Ark. 1969).

There was no reason why an insurer could not limit his coverage of vehicles owned by the insured to the automobile or motor vehicle only. Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972).

A "hit-and-run" provision in an automobile policy which did not require insured to prove the hit-and-run automobile was uninsured when there was physical contact and the operator or owner of the automobile could not be ascertained was a valid liberalization of the coverage required by this section and thus the provision did not contravene public policy. Ward v. Consolidated Underwriters, 259 Ark. 696, 535 S.W.2d 830 (1976).

Uninsured Motorist Act was not violated by provision in policy insuring school bus which required that an insured have physical contact with the bus in order to be entitled to benefits under the policy. Southern Farm Bureau Cas. Ins. Co. v. Fields, 262 Ark. 144, 553 S.W.2d 278 (1977).

Where insured paid premiums for uninsured motorist liability coverage and, at the time she purchased her policy, insurer did not even offer underinsured motor vehicle coverage, insured's receipt of the very type of insurance for which she paid premiums did not reduce her coverage, did not give a windfall to the insurer, and was not against the public policy of the state. Hawkins v. State Farm Fire & Cas. Co., 302 Ark. 582, 792 S.W.2d 307 (1990).

Uninsured motorist coverage applies when the collision in question involves the operator of another vehicle which is uninsured; an insurance policy with this provision is not against public policy because this section states that uninsured motorist coverage only applies when an accident is caused by an uninsured automobile. Williams v. Shelter Mut. Ins. Co., 315 Ark. 701, 870 S.W.2d 387 (1994).

—Exclusions.

Exclusion by insurer from the "uninsured motorist" coverage of its policy of automobiles owned by a government or a public agency is void and of no effect. Carter v. St. Paul Fire & Marine Ins. Co., 283 F. Supp. 384 (E.D. Ark. 1968), aff'd, 413 F.2d 539 (8th Cir. 1969); Vaught v. State Farm Fire & Casualty Co., 413 F.2d 539 (8th Cir. 1969).

A policy excluding recovery for any accident involving an uninsured vehicle and

an uninsured motorist, which exclusion was not submitted to the insurance commissioner pursuant to this section, was not invalid since it did not violate the statutory provision that uninsured motorist protection be offered and the insurer made no attempt to secure liability insurance on the vehicle involved. Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972).

This section does not restrict the provisions of insurance contracts so as to render void an exclusion provision providing that insured with uninsured motorist coverage in one automobile not be covered while driving another vehicle owned by him which did not have uninsured motorist coverage. Holcomb v. Farmers Ins. Exch., 254 Ark. 514, 495 S.W.2d 155 (1973); Crawford v. Emcasco Ins. Co., 294 Ark. 569, 745 S.W.2d 132 (1988).

Exclusion of uninsured motorist coverage for bodily injury sustained by any person while occupying, or when struck by, any motor vehicle owned by the insured or any family member which is not insured for this coverage under a policy which defined uninsured vehicle as a land motor vehicle or trailer of any type held valid. Crawford v. Emcasco Ins. Co., 294 Ark. 569, 745 S.W.2d 132 (1988).

Uninsured motorist insurance coverage may not be limited so as to exclude a user of an insured vehicle. First Sec. Bank v. Doe, 297 Ark. 254, 760 S.W.2d 863 (1988).

—Reduction of Coverage.

A clause in a policy providing that coverage under the "uninsured motorist" clause shall be reduced by the total of all amounts paid under any workmen's compensation, disability benefits, or any similar law is void. Carter v. St. Paul Fire & Marine Ins. Co., 283 F. Supp. 384 (E.D. Ark. 1968), aff'd, 413 F.2d 539 (8th Cir. 1969); Travelers Ins. Co. v. National Farmers Union Property & Cas. Co., 252 Ark. 624, 480 S.W.2d 585 (1972).

A provision in an automobile policy that an insurer shall not be obligated to pay under uninsured motorist coverage for that part of damages which the insured may be entitled to recover from the owner or operator of an uninsured automobile, which represents expenses for medical services paid or payable under the medical payments coverage of policy, is void and against public policy in that it reduces the minimum coverage of uninsured motorist protection prescribed and required by law. Heiss v. Aetna Casualty & Surety Co., 250 Ark. 474, 465 S.W.2d 699 (1971).

The 1991 amendment to § 23-89-209 makes it clear that the legislature intended the 1987 Act, when passed, to provide that an insured's recovery of underinsured motorist coverage should not be reduced or set-off by the amount received from the tortfeasor. Henderson v. Universal Underwriters Ins. Co., 768 F. Supp. 688 (E.D. Ark. 1991).

Recoveries.

For cases discussing amount and distribution of coverage and recovery where other insurance clause is included in policy, see Safeco Ins. Co. v. Robey, 399 F.2d 330 (8th Cir. 1968); Childers v. Southern Farm Bureau Cas. Ins. Co., 282 F. Supp. 866 (E.D. Ark. 1968); Jones v. Morrison, 284 F. Supp. 1016 (W.D. Ark. 1968); MFA Mut. Ins. Co. v. Wallace, 245 Ark. 230, 431 S.W.2d 742 (1968); Harris v. Southern Farm Bureau Cas. Ins. Co., 247 Ark. 961, 448 S.W.2d 652 (1970); Dugal v. Commercial Std. Ins. Co., 456 F. Supp. 290 (W.D. Ark. 1978).

The injured policyholder should only receive the limits of his underinsured coverage if his total damages equal or exceed that limit plus the amount received from the tortfeasor. Henderson v. Universal Underwriters Ins. Co., 768 F. Supp. 688 (E.D. Ark. 1991).

Rejection.

Where minor purchased insurance coverage on his motorcycle but rejected uninsured motorist protection and paid the premium accordingly, he could not thereafter sue on the uninsured motorist provision of the policy on the ground that, being a minor, he had the right to disaffirm such rejection. Lamb v. Midwest Mut. Ins. Co., 296 F. Supp. 131 (W.D. Ark. 1969), aff'd, 421 F.2d 179 (8th Cir. 1970).

Where, after the insured had rejected uninsured motorist coverage, the insurer issued an endorsement for a substitute vehicle, the rejection of uninsured motorist coverage was not effective as to the coverage provided under the endorsement. Lucky v. Equity Mut. Ins. Co., 259 Ark. 846, 537 S.W.2d 160 (1976).

Summary judgment was improperly granted where evidence was insufficient

to find that there had been a knowing rejection of the uninsured motorist coverage. Tisdale v. Hicks, 268 Ark. 1111, 599 S.W.2d 145 (Ct. App. 1980).

When the parties to an insurance contract agree to a policy endorsement which has the effect of substituting coverage of one automobile for that of another, the transaction constitutes new insurance "delivered or issued for delivery in this state"; the addition of the words "and this rejection shall continue until withdrawn in writing by the insured" to subsection (b) of this section did not change this holding. American Nat'l Property & Cas. Co. v. Ellis, 315 Ark. 524, 868 S.W.2d 469 (1994).

Where the insured requested that his insurance policy be renewed with the same coverage as his previous policy, which did not include uninsured motorist coverage, there was no clear, intentional, and knowing rejection of uninsured motorist coverage. Columbia Mut. Ins. Co. v. Estate of Baker, 65 Ark. App. 22, 984 S.W.2d 829 (1999).

Written rejection of uninsured motorist bodily injury coverage is not required. Estate of Baker v. Columbia Mut. Ins. Co., 71 Ark. App. 345, 32 S.W.3d 36 (2000).

Uninsured Motorist or Vehicle.

Where the question of whether the driver of an automobile constituted an uninsured motorist was controverted, the burden was upon the insured to make proof of such fact, and such proof could not be supplied by pleadings. Southern Farm Bureau Cas. Ins. Co. v. Gottsponer, 245 Ark. 735, 434 S.W.2d 280 (1968).

Where plaintiff was unable to prove the hit-and-run automobile was uninsured he was denied recovery under the uninsured motorist provision. Ward v. Consolidated Underwriters, 259 Ark. 696, 535 S.W.2d 830 (1976).

Where driver of truck which struck insured's vehicle was not an agent or employee of the corporation which hired the truck driver's employer to haul gravel, the corporation was not legally responsible for the truck; therefore, the truck was uninsured to the extent of the difference between the amount of coverage the employer had no the truck and the amount required by the Financial Responsibility Act. State Farm Mut. Auto. Ins. Co. v. Cates, 261 Ark. 129, 546 S.W.2d 423 (1977).

Evidence held to be insubstantial that the car was "uninsured" at the time of the accident within the meaning of this section. Home Ins. Co. v. Harwell, 263 Ark. 884, 568 S.W.2d 17 (1978).

Nothing in this section suggests that the General Assembly intended to allow an insured to purchase a liability policy, which included uninsured motorist coverage, for one of his vehicles and to extend that coverage to other uninsured vehicles owned by the insured. Crawford v. Emcasco Ins. Co., 294 Ark. 569, 745 S.W.2d 132 (1988).

Uninsured motorist policy that relieved insured of the burden of proving that another driver was uninsured only in cases where there was actual physical contact does not violate Arkansas public policy because the policy exceeds the requirements of this section; therefore, a trial court erred in granting summary judgment in favor of insured in a case involving insurer's failure to pay uninsured motorist benefits where the insured sustained injuries after running off the road due the negligence of an unidentified driver. State Farm Mut. Auto. Ins. Co. v. Henderson, 356 Ark. 335, 150 S.W.3d 276 (2004).

Summary judgment was properly awarded to insurers in a motor vehicle passenger's action to recover uninsured motorist benefits after a car in which the passenger was riding was involved in an accident where Acts 2003, No. 1043, amending § 27-19-503, did not amend this section. The law under § 27-19-503 remained that a plaintiff had to prove that the other vehicle was uninsured. Kelley v. USAA Cas. Ins. Co., 371 Ark. 344, 266 S.W.3d 734 (2007).

Insured was not entitled to underinsured-motorist coverage under a personal umbrella liability policy endorsement to an insurance policy issued by the insurer because an obligation to offer uninsured-motorist coverage was a prerequisite to an insurer's obligation to offer underinsured-motorist coverage under § 23-89-209, an insurer was not obligated under subdivision (a)(3)(B) of this section to offer uninsured-motorist coverage in conjunction with an umbrella policy, and thus, an insurer issuing an umbrella policy had no obligation to offer underinsured-motorist coverage to its insured. Econ. Premier

Assur. Co. v. Everhart, 623 F. Supp. 2d 988 (W.D. Ark. 2009).

Cited: Pinkus v. Southern Farm Bureau Cas. Ins. Co., 292 F. Supp. 141 (E.D. Ark. 1968); MFA Mut. Ins. Co. v. Bradshaw, 245 Ark. 95, 431 S.W.2d 252 (1968); MFA Mut. Ins. Co. v. McKinley, 245 Ark. 326, 245 Ark. 795, 432 S.W.2d 484 (1968); Allstate Ins. Co. v. Harrison, 307 F. Supp. 743 (W.D. Ark. 1969); Edmundson v. Commercial Union Ins. Co., 249 Ark. 350, 459 S.W.2d 112 (1970); Alexander v. Pilot Fire & Cas. Ins. Co., 331 F. Supp. 561 (E.D. Ark. 1971); Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972); Barnhill v. Farm Bureau Mut. Ins. Co., 12 Ark. App. 123, 671 S.W.2d 233 (1984); Edens v. Shelter Mut. Ins. Co., 923 F.2d 79 (8th Cir. 1991); Gullett v. Brown, 307 Ark. 385, 820 S.W.2d 457 (1991); Shelter Mut. Ins. Co. v. Irvin, 309 Ark. 331, 831 S.W.2d 135 (1992); Nationwide Mut. Ins. Co. v. Worthey, 314 Ark. 185, 861 S.W.2d 307 (1993); Warford v. State Farm Mut. Auto. Ins. Co., 871 F. Supp. 1085 (W.D. Ark. 1994); Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).

23-89-404. Uninsured motorist property damage coverage.

(a) Every insured purchasing uninsured motorist bodily injury coverage shall be provided an opportunity to include uninsured motorist property damage coverage, subject to provisions filed with and approved by the Insurance Commissioner, applicable to losses in excess of two hundred dollars ($200). However, the deductible of two hundred dollars ($200) shall not apply if:

(1) The vehicle involved in the accident is insured by the same insurer for both collision and uninsured motorist property damage coverage; and

(2) The operator of the other vehicle has been positively identified and is solely at fault.

(b) No insurer shall be required to offer limits of uninsured motorist property damage coverage greater in amount than the property damage liability limits purchased by the insured.

(c)(1) After the uninsured motorist property damage coverage has been made available to an insured one (1) time and has been rejected in writing, it need not again be made available in any continuation, renewal, reinstatement, or replacement of the policy or the transfer of vehicles insured under the policy, unless the insured makes a written request for the coverage.

(2) However, whenever a new application is submitted in connection with any renewal, reinstatement, or replacement transaction, the provisions of this section shall apply in the same manner as when a new policy is being issued.

(d) As used in this section, "property damage" means damage to the insured vehicle, plus a reasonable allowance for loss of use of the vehicle.

History. Acts 1965, No. 464, § 1; 1977, No. 532, § 1; 1983, No. 732, § 1; 1985, No. 713, § 1; A.S.A. 1947, § 66-4003; Acts 2005, No. 1697, § 21.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemina-

tion of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

RESEARCH REFERENCES

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Survey — Insurance, 10 U. Ark. Little Rock L.J. 217.

CASE NOTES

Analysis

Purpose.
Applicability.
Automobiles.
Liability of Insurer.
Policy Provisions.
Recoveries.
Rejection.
Uninsured Motorist or Vehicle.

Purpose.

The purpose of providing the mandatory offering of uninsured motorist coverage was to provide those who purchased liability insurance with protection for injuries caused by persons who did not purchase liability coverage. Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972).

The purpose of this section was to require the same amount of coverage to one injured by the negligence of a motorist who carries no liability insurance as would be available had the motorist had the minimum coverage necessary to meet the requirements of the Motor Vehicle Safety Responsibility Act, set out in § 27-19-605. Aetna Ins. Co. v. Smith, 263 Ark. 849, 568 S.W.2d 11 (1978).

The legislature's intent was that uninsured motorist coverage should apply only where injury is the result of a collision involving the insured's car and a car owned by an uninsured motorist and that uninsured motorist coverage should not apply where the accident involves the insured's car only; therefore, that portion of the uninsured motorist coverage policy which denied recovery to "covered" persons injured by vehicles owned by themselves or their families was not void as against public policy. Davis v. Bean, 804 F.2d 1018 (8th Cir. 1986).

Applicability.

Uninsured motorist coverage does not apply when an accident involves the insured's car only. Pardon v. Southern Farm Bureau Cas. Ins. Co., 315 Ark. 537, 868 S.W.2d 468 (1994).

Automobiles.

The term "motorcycle" was not recognized as included in the word "automobile" under Arkansas laws. Phillips ex rel. Phillips v. Midwest Mut. Ins. Co., 329 F. Supp. 853 (W.D. Ark. 1971).

Liability of Insurer.

It was unclear, based on the current record, whether or not a district court could assert jurisdiction under 28 U.S.C.S. § 1332(a) and (d) over a class action suit brought by an insured on her own behalf and on behalf of a class of fellow Arkansas policyholders who owned automobile liability policies issued by an insurance company. Although theoretically the amount that the insurance company would have to pay, if it was required to provide no fault coverage to all of the class members as required by §§ 23-89-202, 23-89-403, this section, and § 23-89-209, would exceed 28 U.S.C.S. § 1332(d) amount in controversy requirements, there was no evidence showing how much the company might actually have to pay, as not every class member would get in an accident or be entitled to no fault benefits. Toller v. Sagamore Ins. Co., 514 F. Supp. 2d 1111 (E.D. Ark. 2007).

Policy Provisions.

Exclusion by insurer from the "uninsured motorist" coverage of its policy of

automobiles owned by a government or a public agency is void and of no effect. Carter v. St. Paul Fire & Marine Ins. Co., 283 F. Supp. 384 (E.D. Ark. 1968), aff'd, 413 F.2d 539 (8th Cir. 1969); Vaught v. State Farm Fire & Casualty Co., 413 F.2d 539 (8th Cir. 1969).

"Other insurance coverage" clause was not violative of this section whether or not the insurance policies were carried by the same company or different companies. Treece v. Home Ins. Co., 295 F. Supp. 262 (E.D. Ark. 1969).

There was no reason why an insurer could not limit his coverage of vehicles owned by the insured to the automobile or motor vehicle only. Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972).

A policy excluding recovery for any accident involving an uninsured vehicle and an uninsured motorist, which exclusion was not submitted to the Insurance Commissioner pursuant to this section, was not invalid since it did not violate the statutory provision that uninsured motorist protection be offered and the insurer made no attempt to secure liability insurance on the vehicle involved. Howard v. Grain Dealers Mut. Ins. Co., 342 F. Supp. 1125 (W.D. Ark. 1972).

This section does not restrict the provisions of insurance contracts so as to render void an exclusion provision providing that insured with uninsured motorist coverage in one automobile not be covered while driving another vehicle owned by him which did not have uninsured motorist coverage. Holcomb v. Farmers Ins. Exch., 254 Ark. 514, 495 S.W.2d 155 (1973).

A "hit-and-run" provision in an automobile policy which did not require insured to prove that the hit-and-run automobile was uninsured when there was physical contact and the operator or owner of the automobile could not be ascertained was a valid liberalization of the coverage required by this section, and thus the provision did not contravene public policy. Ward v. Consolidated Underwriters, 259 Ark. 696, 535 S.W.2d 830 (1976).

Uninsured Motorist Act was not violated by provision in policy insuring school bus which required that an insured have physical contact with the bus in order to be entitled to benefits under the policy. Southern Farm Bureau Cas. Ins. Co. v. Fields, 262 Ark. 144, 553 S.W.2d 278 (1977).

A policy requiring another vehicle to trigger the policy's uninsured motorist coverage does not violate this state's public policy. Pardon v. Southern Farm Bureau Cas. Ins. Co., 315 Ark. 537, 868 S.W.2d 468 (1994).

Recoveries.

For cases discussing amount and distribution of coverage and recovery where other insurance clause is included in policy, see Safeco Ins. Co. v. Robey, 399 F.2d 330 (8th Cir. 1968); Childers v. Southern Farm Bureau Cas. Ins. Co., 282 F. Supp. 866 (E.D. Ark. 1968); Jones v. Morrison, 284 F. Supp. 1016 (W.D. Ark. 1968); MFA Mut. Ins. Co. v. Wallace, 245 Ark. 230, 431 S.W.2d 742 (1968).

In action brought by insured against his insurance carrier, where driver of truck which caused injury was not an agent or employee of the corporation which hired insured's employer to haul gravel, the insurance carrier was not entitled to a reduction of its liability to the insured, despite settlement received from corporation since the corporation was not legally liable for the use of the truck. State Farm Mut. Auto. Ins. Co. v. Cates, 261 Ark. 129, 546 S.W.2d 423 (1977).

Rejection.

Where minor purchased insurance coverage on his motorcycle but rejected uninsured motorist protection and paid the premium accordingly, he could not thereafter sue on the uninsured motorist provision of the policy on the ground that, being a minor, he had the right to disaffirm such rejection. Lamb v. Midwest Mut. Ins. Co., 296 F. Supp. 131 (W.D. Ark. 1969), aff'd, 421 F.2d 179 (8th Cir. 1970).

Where, after the insured had rejected uninsured motorist coverage, the insurer issued an endorsement for a substitute vehicle, the rejection of uninsured motorist coverage was not effective as to the coverage provided under the endorsement. Lucky v. Equity Mut. Ins. Co., 259 Ark. 846, 537 S.W.2d 160 (1976).

Summary judgment was improperly granted where evidence was insufficient to find that there had been a knowing rejection of the uninsured motorist coverage. Tisdale v. Hicks, 268 Ark. 1111, 599 S.W.2d 145 (Ct. App. 1980).

Uninsured Motorist or Vehicle.

Where question of whether driver of automobile was an uninsured motorist was controverted, the burden was upon the insured to make proof of such fact and such proof could not be supplied by pleadings. Southern Farm Bureau Cas. Ins. Co. v. Gottsponer, 245 Ark. 735, 434 S.W.2d 280 (1968).

Where driver of truck which struck insured's vehicle was not an agent or employee of the corporation which hired the truck driver's employer to haul gravel, the corporation was not legally responsible for the truck; therefore, the truck was uninsured to the extent of the difference between the amount of coverage the employer had on the truck and the amount required by the Financial Responsibility Act. State Farm Mut. Auto. Ins. Co. v. Cates, 261 Ark. 129, 546 S.W.2d 423 (1977).

Evidence held to be insubstantial that the car was "uninsured" at the time of the accident within the meaning of this section. Home Ins. Co. v. Harwell, 263 Ark. 884, 568 S.W.2d 17 (1978).

Cited: Pinkus v. Southern Farm Bureau Cas. Ins. Co., 292 F. Supp. 141 (E.D. Ark. 1968); MFA Mut. Ins. Co. v. Bradshaw, 245 Ark. 95, 431 S.W.2d 252 (1968); MFA Mut. Ins. Co. v. McKinley, 245 Ark. 326, 245 Ark. 795, 432 S.W.2d 484 (1968); Alexander v. Pilot Fire & Cas. Ins. Co., 331 F. Supp. 561 (E.D. Ark. 1971); Barnhill v. Farm Bureau Mut. Ins. Co., 12 Ark. App. 123, 671 S.W.2d 233 (1984); Jacobs v. Gulf Ins. Co., 85 Ark. App. 435, 156 S.W.3d 737 (2004).

23-89-405. Subrogation of insurer making payment.

In the event of payment to any person under the coverage required by this subchapter and subject to the terms and conditions of the coverage, the insurer making the payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of the person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

History. Acts 1965, No. 464, § 4; A.S.A. 1947, § 66-4006.

RESEARCH REFERENCES

Ark. L. Rev. Insurance — Subrogation — Insured's Dismissal with Prejudice, 24 Ark. L. Rev. 573.

U. Ark. Little Rock L.J. Note, Insurance — Subrogation — A Subrogation Clause in a Health Insurance Policy is Enforceable Even Though the Insured Has Not Been Made Whole. Higginbotham v. Arkansas Blue Cross & Blue Shield, 312 Ark. 199, 849 S.W.2d 464 (1993), 16 U. Ark. Little Rock L.J. 475.

CASE NOTES

Analysis

Joinder of Third Parties.
Set-Off.
Subrogation in Advance.

Joinder of Third Parties.

The plaintiff in an action to enforce an uninsured motorist clause against his insurance company cannot be compelled under this section or § 16-61-207 to join as third party defendants the alleged tortfeasors, although the defendant insurance company may make the alleged tortfeasors defendants by cross-complaint. Home Ins. Co. v. Williams, 252 Ark. 1012, 482 S.W.2d 626 (1972).

Set-Off.

Trial court erred in denying insurer's motion for a set-off for the medical expenses paid to insured where, even though the underinsured motorist coverage extended to damages for the bodily injuries that insured sustained, the jury did not know — and had no reason to infer from the proof at trial — all or any part of insured's medical expenses had already been paid by insurer under the medical payments provision of his auto policy; in addition, where part of the money received from the tortfeasor's insurer went to subrogate insurer, but that left $5,401.42 for which it was not subrogated, to allow insured to recover a verdict that included the cost of those medical expenses that had already been paid by insurer would leave insured with a double recovery contrary to the equitable principle of subrogation. State Farm Mut. Auto. Ins. Co. v. Rose, 52 Ark. App. 175, 916 S.W.2d 764 (1996).

Subrogation in Advance.

Where plaintiff's injuries were caused by the actions of joint tortfeasors and one tortfeasor paid $10,000 to plaintiff and his insurance carrier, the payment amounted to the collection of subrogation in advance and satisfied the liability under the uninsured motorist provision of the policy since it is clear that if the insurance carrier had paid plaintiff pursuant to the terms of his uninsured motorist coverage it would have been entitled to subrogation under this section. Black v. Farm Bureau Mut. Ins. Co., 272 Ark. 406, 614 S.W.2d 937 (1981).

Subchapter 5 — Amusement Ride and Amusement Attraction Safety Insurance Act

SECTION.
23-89-501. Title.
23-89-502. Definitions.
23-89-503. Exemptions.
23-89-504. Safety inspection and insurance required — Enforcement — Violations.
23-89-505. Safety inspections, notice, and insurance required.
23-89-506. Inspections and fees.
23-89-507. Inspection by insurance company — Change in coverage.
23-89-508. Rules and regulations.
23-89-509. Cease and desist orders — Notice required.
SECTION.
23-89-510. Accidents — Reporting injuries or death — Investigations.
23-89-511. Amusement ride operators.
23-89-512. Prohibited bungee operations.
23-89-513. Posting ride safety rules required.
23-89-514. Patron safety.
23-89-515. Nondestructive testing.
23-89-516. Records.
23-89-517. Disposition of funds.
23-89-518. Amusement Ride Safety Advisory Board — Creation — Duties.

23-89-501. Title.

This subchapter shall be known and may be cited as the "Amusement Ride and Amusement Attraction Safety Insurance Act".

History. Acts 1983, No. 837, § 1; A.S.A. 1947, § 66-5901.

23-89-502. Definitions.

As used in this subchapter:

(1)(A) "Amusement attraction" means any building or structure around, over, and through which persons may be moved by vehicle or mechanically driven device integral to the building or structure, and which provides amusement, pleasure, thrills, or excitement.

(B) "Amusement attraction" does not include theatres, museums, or enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;

(2) "Amusement ride" means any mechanical device which carries or conveys passengers along, around, or over a fixed route or course or within a defined area for the purpose of giving the passengers amusement, pleasure, thrills, or excitement and includes the following:

(A) Bungee rides or bungee operations which utilize as a component a bungee cord, which is an elastic rope made of rubber, latex, or other elastic-type materials whether natural or synthetic;

(B) "Go-kart", which means a ride in which a vehicle is controlled or driven by patrons specifically designed for and run on a fixed course;

(C) Inflatable attractions such as "space walks", inflatable slides, or inflatable jousting or boxing rings;

(D) Any wave pool, water slide, or other similar attraction that totally or partially immerses a patron in water; and

(E) Artificial climbing walls;

(3) "Department" means the Department of Labor;

(4) "Director" means the Director of the Department of Labor;

(5) "Nondestructive testing" means the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing to examine materials or components in ways that do not impair their future usefulness and serviceability in order to:

(A) Detect, locate, measure, and evaluate discontinuities, defects, and other imperfections;

(B) Assess integrity, properties, and composition; and

(C) Measure geometrical characters; and

(6) "Owner" means any person who owns an amusement ride or attraction or in the event that the amusement ride or attraction is leased, the lessee.

History. Acts 1983, No. 837, § 2; A.S.A. 1947, § 66-5902; Acts 1995, No. 631, § 1; 2001, No. 1365, § 1; 2005, No. 924, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

23-89-503. Exemptions.

The following amusement rides or amusement attractions are exempt from the provisions of this subchapter:

(1) Nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, swing-

ing gates, and physical fitness devices except when an admission fee is charged for usage or an admission fee is charged to immediate areas where the equipment is located;

(2) An amusement ride or amusement attraction which is owned and operated by a nonprofit religious, educational, or charitable institution or association, or a fair if the ride or attraction is subject to inspection by the State Fire Marshal or by any political subdivision of the state under its building, fire, electrical, and related public safety ordinances;

(3) Coin-operated amusement rides or amusement attractions located on the premises of retail business establishments; and

(4) An amusement ride or amusement attraction which is owned and operated by the State of Arkansas or any political subdivision thereof.

History. Acts 1983, No. 837, § 5; A.S.A. 1947, § 66-5905.

23-89-504. Safety inspection and insurance required — Enforcement — Violations.

(a) It is unlawful for any person or entity to operate an amusement attraction or amusement ride unless the person or entity maintains liability insurance in the minimum amount required by this subchapter at all times during the operation of the amusement attraction or amusement ride in the state and unless the person has a current safety inspection report made at the time of set-up of the amusement attraction or amusement ride, but before use by the public.

(b)(1) The Director of the Department of Labor may conduct examinations and investigations into the affairs of any person or entity subject to the provisions of this subchapter for the purpose of determining compliance with the provisions of this subchapter.

(2) The Director of the Department of Labor shall administer and enforce the provisions of this subchapter.

(3) The Director of the Department of Labor shall promulgate regulations for the proper administration and enforcement of this subchapter, including regulations establishing minimum safety requirements for the operation and maintenance of amusement rides and amusement attractions.

(4) The Director of the Department of Labor shall employ amusement ride inspectors certified by the National Association of Amusement Ride Safety Officials.

(c) If the Director of the Department of Labor finds that an operator or owner has failed to comply with the provisions of this subchapter, he or she may order the operator or owner to immediately cease operating the amusement attraction or amusement ride and may impose upon the operator or owner an administrative penalty of not more than ten thousand dollars ($10,000).

(d)(1) If the Director of the Department of Labor finds that an operator or owner failed to comply with the provisions of this subchapter, he or she shall so inform the prosecuting attorney in whose district any purported violation may have occurred.

(2)(A) Upon conviction, the operator or owner shall be guilty of a Class A misdemeanor.

(B) Upon conviction of a knowing violation, the operator or owner shall be guilty of a Class D felony.

(3) Each day of violation shall constitute a separate offense.

(e) The Director of the Department of Labor shall have authority to bring a civil action in any court of competent jurisdiction, without payment of costs or giving bond for costs, to recover any administrative penalty imposed pursuant to this subchapter or to recover any delinquent fees owed pursuant to this subchapter.

(f) The Director of the Department of Labor and his or her deputies, assistants, examiners, and employees and the Director of the Department of Arkansas State Police and his or her deputies, officers, assistants, and employees and any public law enforcement officer shall not be liable for any damages occurring as a result of the implementation of this subchapter.

History. Acts 1983, No. 837, § 8; A.S.A. 1947, § 66-5908; Acts 1987, No. 839, § 4; 1995, No. 631, § 2; 2001, No. 1365, § 2; 2005, No. 1994, § 458.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

23-89-505. Safety inspections, notice, and insurance required.

(a) Any person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall as a condition thereof obtain a safety inspection report issued by the owner or operator's liability insurer or an inspector employed by the Department of Labor prior to commencing operation or opening to the public.

(b) Each person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall be covered by a policy of insurance issued by an insurance company authorized to do business in Arkansas or by a surplus lines insurer approved in Arkansas and insuring the owner or operator against liability for personal injury or property damage arising out of the use or operation of the amusement attraction or amusement ride, in the minimum amount of one million dollars ($1,000,000) for each incident or occurrence.

(c)(1) Any person or entity intending to operate an amusement attraction or amusement ride in this state shall notify the Director of the Department of Labor of such intent and shall notify the director of the location, dates, and times of intended operation.

(2) The notice must be made to the director four (4) days prior to intended operation, excluding Saturdays, Sundays, or any legal holidays.

(d) Any person or entity failing to comply with subsection (c) of this section shall be subject to an administrative penalty issued by the director of no more than five thousand dollars ($5,000) in addition to other penalties, both administrative and criminal, contained in this subchapter.

(e) The owner, manager, or operator shall:

(1) Promptly file proof of insurance with each fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or amusement ride being offered for use by the public for each location in this state where each amusement attraction or amusement ride is in operation or is scheduled to be in operation; and

(2) Provide a copy of any safety inspection report to the fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or amusement ride being offered for use by the public, upon request or pursuant to contractual agreement.

History. Acts 1983, No. 837, § 3; A.S.A. 1947, § 66-5903; Acts 1987, No. 839, § 1; 1995, No. 631, § 3; 2001, No. 1365, § 3.

23-89-506. Inspections and fees.

(a)(1) The Director of the Department of Labor is authorized to inspect each person or entity to ensure compliance with this subchapter.

(2) Two (2) times per calendar year, the director shall inspect all permanently placed operational amusement rides or amusement attractions located in this state being operated for profit or charity.

(3) All portable amusement rides or amusement attractions shall be inspected by the director every time they are moved to a new location in Arkansas and before they are permitted to commence operation or open to the public.

(4)(A) Inflatable attractions, self-contained mobile playgrounds, artificial climbing walls, and other patron-propelled amusement rides or amusement attractions shall be inspected every six (6) months, unless a more frequent schedule of inspections is established by regulation of the director for certain types of inflatable attractions and self-contained mobile playgrounds.

(B) Self-contained mobile playgrounds, artificial climbing walls, and other patron-propelled amusement rides or amusement attractions shall be inspected pursuant to subdivision (a)(4)(A) of this section only if such playgrounds contain no mechanical or electrical parts, structures, or additions such as blowers or lights.

(C) The director may determine by rule which other portable amusement ride or amusement attraction is sufficiently safe to justify inspection only one (1) time each six (6) months.

(b) The director is authorized to make an inspection on an emergency basis when notification pursuant to this subchapter is made less than four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to

the date of the operation of the facility, if he or she determines that the owner or operator could not have reasonably known of the proposed operation prior to the four-day period and that the owner or operator meets all other requirements for operation in this state.

(c) If the director or an authorized employee of the Department of Labor finds that any amusement ride or amusement attraction is defective in a manner affecting patron safety or unsafe, he or she shall attach to the amusement ride or amusement attraction a notice and order prohibiting its use or operation. Operation of the amusement ride shall not resume until the unsafe or hazardous condition is corrected and the director or his or her authorized representative permits such an operation.

(d) Any inspector certified pursuant to the requirements of this subchapter who, upon inspection of an amusement ride or amusement attraction, finds the amusement ride or amusement attraction to be defective or unsafe shall immediately report the amusement ride or amusement attraction and its condition to the department.

(e) The director shall charge a fee to be paid by the owner of any amusement ride or amusement attraction for all amusement ride safety inspections performed by any employee of the department. Such fees shall be as follows:

(1) For one (1) to five (5) amusement rides or amusement attractions, one hundred dollars ($100);

(2) For six (6) to fifteen (15) amusement rides or amusement attractions, two hundred dollars ($200);

(3) For sixteen (16) to twenty-five (25) amusement rides or amusement attractions, three hundred dollars ($300);

(4) For twenty-six (26) to thirty-five (35) amusement rides or amusement attractions, four hundred dollars ($400); and

(5) For thirty-six (36) and more amusement rides or amusement attractions, six hundred dollars ($600).

(f) The director is authorized by regulation to implement an inspection fee waiver program for the benefit of a county fair association, provided that:

(1) The county's population is under fifteen thousand (15,000) based on United States Bureau of the Census estimates as of July 1, 1999; and

(2) The county fair association can demonstrate that it would be unable to obtain a carnival for its county fair without such a waiver.

History. Acts 1983, No. 837, § 6; A.S.A. 1947, § 66-5906; Acts 1987, No. 839, § 3; 1995, No. 631, § 4; 2001, No. 1365, § 4; 2005, No. 924, § 2; 2013, No. 540, § 1.

Amendments. The 2013 amendment added (a)(4)(C).

23-89-507. Inspection by insurance company — Change in coverage.

(a)(1) Each insurance company insuring an operator of an amusement attraction or amusement ride as required in this subchapter shall

inspect the amusement attraction or amusement rides of the insured for safety at least one (1) time each calendar year.

(2) The operator shall maintain a copy of such a report at the site of operation of the amusement attraction or amusement ride, together with proof of insurance coverage.

(b) If any insurer insuring an operator shall cancel the coverage of the operator, the insurer shall notify the Director of the Department of Labor of the cancellation at least ten (10) days before the cancellation is effective.

(c) The insurer shall immediately notify the director if the cancellation notice is rescinded or coverage is reinstated.

(d) If the insurer finds any amusement attraction or amusement ride to be unsafe or cancels the insurance coverage and so notifies the director, then the director shall immediately issue a cease and desist order preventing any operation until written documentation is provided to the director that the amusement attraction or amusement ride has been made safe or insurance coverage has been obtained.

(e) Any insurance company or surplus lines insurer failing to comply with this section shall be subject to revocation of its certificate of authority or registration by the Insurance Commissioner, or in lieu of suspension or revocation, a fine assessed by the commissioner of not more than fifty thousand dollars ($50,000).

(f) Any employee or contractor of an insurer inspecting amusement rides in Arkansas shall be registered and certified by the Department of Labor pursuant to regulation adopted by the director.

History. Acts 1983, No. 837, § 4; A.S.A. 1947, § 66-5904; Acts 1987, No. 839, § 2; 1995, No. 631, § 5; 2001, No. 1365, § 5.

23-89-508. Rules and regulations.

The Director of the Department of Labor is authorized to adopt appropriate rules and regulations to carry out the intent and purposes of this subchapter and to assure its efficient and effective enforcement.

History. Acts 1983, No. 837, § 7; A.S.A. 1947, § 66-5907; Acts 1995, No. 631, § 6.

23-89-509. Cease and desist orders — Notice required.

(a)(1) Upon issuance of cease and desist orders pursuant to § 23-89-504 or § 23-89-507, the Director of the Department of Labor shall promptly transmit his or her order to the Director of the Department of Arkansas State Police.

(2) Whenever possible, the Director of the Department of Labor shall notify any applicable fair boards or sponsoring organizations in the respective districts or counties of this state where the amusement attractions or amusement rides are in operation or are scheduled to be in operation.

(3) The Director of the Department of Labor shall promptly notify these parties when a cease and desist order has been rescinded upon proof of the operator's compliance with the provisions of this subchapter.

(b) Upon receipt of the Director of the Department of Labor's order to cease and desist operations pursuant to subsection (a) of this section, the Department of Arkansas State Police shall promptly serve the order on the operator and order the operator immediately to cease operation of all applicable amusement attractions or amusement rides in operation or scheduled to be in operation in those districts or counties until the cease and desist order has been rescinded.

History. Acts 1987, No. 839, § 2; 1995, No. 631, § 7.

23-89-510. Accidents — Reporting injuries or death — Investigations.

(a) Any mechanical, structural, or electrical defects directly affecting patron safety for which an amusement ride is closed to patron use for a period of time more than three (3) hours must be reported in writing personally or by facsimile by the owner or operator to the Department of Labor within twenty-four (24) hours after the closing of the amusement ride.

(b)(1) The operator of an amusement ride shall immediately cease to operate any ride involved in a fatality or serious physical injury. The owner or operator shall notify the department of such an accident within four (4) hours of its occurrence by telephone or facsimile. The owner or operator shall file a written accident report personally or by facsimile with the department within twenty-four (24) hours of the accident. Within twenty-four (24) hours after receipt of such a report, the department shall initiate an investigation of the occurrence and an inspection of the ride. The department shall perform the inspection in a manner that proceeds with all practicable speed and minimizes the disruption of the amusement facility at which the amusement ride is located.

(2) Unless authorized in writing by the department, no amusement ride may be operated, moved, altered, repaired, or tampered with, except to protect life, limb, and property following an accident involving a serious injury or death until the department has completed its inspection and investigation.

History. Acts 2001, No. 1365, § 6.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

23-89-511. Amusement ride operators.

(a) Any person directly operating any amusement ride or amusement attraction:

(1) Must be at least sixteen (16) years of age;

(2) Must be trained in the proper use and operation of the device;

(3) Must operate only one (1) amusement ride at a time; and

(4) May not operate any amusement ride or amusement attraction while intoxicated.

(b) For the purposes of this section, "intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such a degree that the operator's reactions, motor skills, and judgment are substantially altered and the operator, therefore, constitutes a clear and substantial danger of physical injury or death to amusement ride patrons.

History. Acts 2001, No. 1365, § 7.

23-89-512. Prohibited bungee operations.

The following bungee operations are prohibited:

(1) A bungee operation conducted with balloons, blimps, helicopters, or other aircraft;

(2) "Sand bagging", which is the practice of holding onto any object, including another person, while bungee jumping, for the purpose of exerting more force on the bungee cord to stretch it further, and then releasing the object during the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone;

(3) Tandem or multiple bungee jumping, except for rides that the manufacturer has designed for multiple patrons; and

(4) Bungee jumping from any bridge, overpass, or any other structure not specifically designed as an amusement ride or amusement attraction.

History. Acts 2001, No. 1365, § 8.

23-89-513. Posting ride safety rules required.

All requirements for rider safety within the control of the rider must be prominently posted in a manner reasonably expected to provide notice to the rider. Such requirements or restrictions should include:

(1) Any height or weight restrictions;

(2) Safety belt or bars or other safety restraint systems requirements; and

(3) Prohibitions against:

(A) Standing before cessation of the amusement ride or amusement attraction; and

(B) Horseplay.

History. Acts 2001, No. 1365, § 9.

23-89-514. Patron safety.

(a) All patrons on any amusement ride or amusement attraction subject to this subchapter, at a minimum, shall:

(1) Obey the posted safety rules and oral instructions issued by the amusement ride owner or manager or such owner's employee or agent;

(2) Refrain from acting in any manner that may cause or contribute to injuring the patron or others, including:

(A) Interfering with the safe operation of the amusement ride;

(B) Not engaging any safety devices provided;

(C) Disconnecting or disabling a safety device except at the express instruction of the operator;

(D) Altering or enhancing the intended speed, course, or direction of the amusement ride;

(E) Extending arms and legs beyond the carrier or seating area;

(F) Throwing, dropping, or expelling an object from or toward an amusement ride; and

(G) Getting on or off an amusement ride or amusement attraction except at the designated time and area, unless directed to do otherwise by an operator due to an emergency.

(b) Parents or guardians of patrons under eighteen (18) years of age have a duty to ensure that the patron complies with the provisions of this section.

(c) Any person eighteen (18) years of age or older who violates the provisions of this section may be charged with a Class A misdemeanor.

History. Acts 2001, No. 1365, § 10.

23-89-515. Nondestructive testing.

(a) An owner may not operate an amusement ride for which the manufacturer recommends nondestructive testing, unless the owner complies with the manufacturer's standards for the testing and the ride meets the manufacturer's acceptance criteria.

(b)(1) If manufacturer's nondestructive testing standards are unavailable for an amusement ride and the Department of Labor deems it necessary, the owner shall provide the standards through a professional engineer as defined in § 17-30-101, an engineering agency, or an individual qualified by training and experience to compile standards based on the ride's specifications and history and using accepted engineering practices.

(2) The professional engineer or other qualified individual shall be approved by the Director of the Department of Labor.

(3) The amusement ride shall meet the criteria established under this subsection.

History. Acts 2001, No. 1365, § 11; Acts 2011, No. 897, § 17.

Amendments. The 2011 amendment substituted "a professional engineer as defined in § 17-30-101" for "a registered professional engineer" in (b)(1); inserted

"professional" in (b)(2); and substituted "established under this subsection" for "so established" in (b)(3).

23-89-516. Records.

(a) The Director of the Department of Labor shall keep records and statistics by year of serious injuries and fatalities resulting from amusement ride accidents. Such records and statistics shall specify the year of the accident, type of injury, type of amusement ride or amusement attraction involved, and cause of the accident.

(b) Each owner or operator shall retain on the premises or with a portable amusement ride the following records:

(1) Proof of insurance coverage as required by this subchapter;

(2) The latest safety inspection report by the Department of Labor and by the owner or operator's insurer;

(3) All maintenance and repair records for a period of one (1) year;

(4) All accident records for a period of one (1) year on premises, although such records shall be maintained and subject to being made available to the director for a period of three (3) years;

(5) A record of employee or operator training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride or amusement attraction; and

(6) A copy of any affidavit of nondestructive testing required by this subchapter.

History. Acts 2001, No. 1365, § 12.

23-89-517. Disposition of funds.

All money received under the provisions of this subchapter shall be deposited into the State Treasury to the credit of the Department of Labor Special Fund.

History. Acts 2001, No. 1365, § 13.

23-89-518. Amusement Ride Safety Advisory Board — Creation — Duties.

(a)(1) There is created an Amusement Ride Safety Advisory Board.

(2)(A) The board shall be appointed by the Governor.

(B) The Director of the Department of Labor or his or her designee shall be ex officio chair.

(C) The board shall consist of five (5) additional members:

(i) One (1) member of the board shall be the Director of the Department of Parks and Tourism or his or her designee;

(ii) One (1) member of the board shall represent owners or operators of amusement rides that are portable in nature;

(iii) One (1) member of the board shall represent owners or operators of permanently placed amusement rides;

(iv) One (1) member of the board shall represent fair managers in Arkansas; and

(v) One (1) member of the board shall represent the general public.

(3)(A) Except for the Director of the Department of Labor and the Director of the Department of Parks and Tourism, the terms of office of the members shall be for four (4) years or until a successor is appointed.

(B) No member of the board shall be appointed to serve more than two (2) consecutive full terms.

(C) At the time of appointment or reappointment, the Governor shall adjust the length of terms to ensure that the terms of board members are staggered so that, insofar as is possible, an equal number of members shall rotate each year.

(b) The duties of the board shall be:

(1) To assist the Director of the Department of Labor with the formulation of rules and regulations regarding the safe operation of amusement rides; and

(2) To give the Department of Labor such counsel and advice as will aid it in the proper enforcement and administration of the provisions of this subchapter.

(c) Except for the ex officio chair and the Director of the Department of Parks and Tourism, the members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 2001, No. 1365, § 14; 2003, No. 600, § 1.

CHAPTER 90

ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT

SECTION.

23-90-101. Title.
23-90-102. Purpose.
23-90-103. Definitions.
23-90-104. Applicability — Exceptions.
23-90-105. Construction.
23-90-106. Arkansas Property and Casualty Advisory Association — Creation — Members.
23-90-107. Arkansas Property and Casualty Advisory Association — Procedures.
23-90-108. Arkansas Property and Casualty Advisory Association — Powers and duties.
23-90-109. Arkansas Property and Casualty Advisory Association — Reports and recommendations.
23-90-110. Arkansas Property and Casualty Advisory Association — Right of officers, directors, and employees to contract — Interested parties.
23-90-111. Covered claims — Notification to insureds of insurer's insolvency.
23-90-112. Estimation of amount needed to pay claims — Assessment of insurers.
23-90-113. Failure to pay assessment.
23-90-114. Accounting for and repayment of assessments.
23-90-115. Payment of covered claims.
23-90-116. Duties of receiver.
23-90-117. Right of recovery.
23-90-118. Issuance of new or renewal policies.

SECTION.
23-90-119. Assessment as credit against taxes.
23-90-120. Liability of insurer, commissioner, etc.
23-90-121. Certain advertisements, announcements, and statements prohibited — Exception.
23-90-122. Rules and regulations.
23-90-123. Appeal of orders.

Cross References. Property and Casualty Insurance Policy Simplification Act, § 23-80-301 et seq.

Effective Dates. Acts 1977, No. 871, § 21: Mar. 30, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and that the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 522, § 53: Mar. 17, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 804, § 33: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from after its passage and approval."

Acts 1987, No. 738, § 10: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 417, § 8: Mar. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws on the regulation of the bail bond business and bail generally are confusing and have been applied in an inconsistent manner; that there is an urgent need for the revision of laws pertaining to bail and that this Act is immediately necessary to eliminate deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1272, § 29: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the Gen-

eral Assembly of the State of Arkansas that the present insurance laws, and motor vehicle laws on the automobile assigned risk plan, are inadequate for the protection of the public; and the immediate passage of this Insurance Omnibus Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Insurance Omnibus Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governer, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral preneed laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Seventeenth Annual Survey of Arkansas Law — Insurance, 17 U. Ark. Little Rock L.J. 451.

23-90-101. Title.

This chapter shall be known and may be cited as the "Arkansas Property and Casualty Insurance Guaranty Act".

History. Acts 1977, No. 871, § 1; A.S.A. 1947, § 66-5501.

23-90-102. Purpose.

This chapter is for the purpose of providing funds in addition to assets of insolvent insurers for the protection of the holders of covered claims as defined in § 23-90-103 through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

History. Acts 1977, No. 871, § 2; A.S.A. 1947, § 66-5502.

CASE NOTES

Analysis

Guaranty Fund.
Holders of Claims.

Guaranty Fund.

The Guaranty Fund is designed to protect individuals, not pay double benefits. Orren v. Smackover Nursing Home, 46 Ark. App. 38, 876 S.W.2d 600 (1994).

Insured was not entitled to have the state's Guaranty Fund pay the claims against it based on the fact that the insurance company of the insured was insolvent since the insured's claims were not "covered claims"; for a claim to be covered, Arkansas law required that the insured and its affiliate not have a net worth exceeding $ 50 million, but the insured admitted that the net worth of the Nevada corporation that had purchased all of the insured's stock exceeded that amount and the Nevada corporation's control of all of the insured's stock meant the Nevada corporation was an "affiliate" whose net worth was properly counted in determining the insured's total net worth. Harold Ives Trucking Co. v. Pickens, 355 Ark. 407, 139 S.W.3d 471 (2003).

Holders of Claims.

A foreign corporation which has its principal place of business elsewhere but which established a substantial presence in Arkansas is not considered a resident, as that term is used in § 23-90-103(2)(A), for the purposes of this subchapter. Douglass v. Levi Strauss & Co., 315 Ark. 380, 868 S.W.2d 70 (1993).

23-90-103. Definitions.

As used in this chapter:

(1) "Commissioner" means the Insurance Commissioner;

(2)(A)(i) "Covered claim" means an unpaid claim of an insured or third-party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies, and which is issued or assumed, whereby an assumption certificate is issued to the insured, by an insurer licensed to do business in this state, in cases in which the insurer becomes an insolvent insurer and the third-party claimant or liability claimant or insured is a resident of this state at the time of

the insured event, or the property from which the claim arises is permanently located in this state.

(ii) Covered claims shall also include one hundred percent (100%) of unearned premiums up to an amount not exceeding twenty-five thousand dollars ($25,000) per policy.

(iii) Individual covered claims shall be limited to three hundred thousand dollars ($300,000) and shall not include any amount in excess of three hundred thousand dollars ($300,000).

(B) A covered claim shall not include an unpaid claim of an insured or third-party liability claimant whose net worth as of December 31 of the year next preceding the date the insurer becomes an insolvent insurer exceeds fifty million dollars ($50,000,000). However, an insured's or third-party liability claimant's net worth on that date shall be deemed to include the aggregate net worth of the insured or third-party liability claimant and all of its affiliates as calculated on a consolidated basis.

(C) A covered claim shall not include any of the following amounts:

(i) Any amount awarded as punitive or exemplary damages;

(ii) Any amount sought as return of premium under any retrospective rating plan; or

(iii) Any amount due to any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries or otherwise. This subdivision (2) shall not prevent the reinsurer, insurer, insurance pool, or underwriting association from presenting the excluded claim to the insolvent insurer or the liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage provided herein or is in excess of the limits of the policy issued by the insolvent insurer.

(D)(i) A covered claim shall not include supplementary payment obligations, including, but not limited to, adjustment fees and expenses, attorney's fees and expenses, court costs, interest, and bond premiums incurred prior to the determination that an insurer is an insolvent insurer under this chapter;

(ii) With respect to a covered claim for unearned premiums, persons who were residents of this state at the time the policy was issued and persons who are residents of this state at the time the company is found to be an insolvent insurer shall be considered to have covered claims under this chapter;

(3) "Insolvent insurer" means an insurer which, after March 30, 1977, is determined to be insolvent by a court of competent jurisdiction;

(4)(A) "Insurer" means any person who writes any kind of insurance to which this chapter applies under § 23-90-104, including the exchange of reciprocal or inter-insurance contracts, and is licensed to transact insurance in this state.

(B) However, this chapter shall not apply to those persons transacting business as a farmers' mutual aid association pursuant to §§ 23-73-101 — 23-73-107, 23-73-110 — 23-73-114, and 23-73-116;

(5)(A) "Net direct written premiums" means the gross amount of premiums received from policies of insurance issued in this state to which this chapter applies, less return premiums and dividends paid or credited to policyholders.

(B) "Net direct written premiums" does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers;

(6) "Payment of covered claims" means actual payment and also means utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims; and

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History. Acts 1977, No. 871, § 5; A.S.A. 1947, § 66-5505; Acts 1987, No. 738, § 2; 1993, No. 901, § 45; 1995, No. 1272, § 25; 1999, No. 881, § 15.

CASE NOTES

Analysis

Covered Claim.
—Default.
—Resident of This State.

Covered Claim.

—Default.

Where contractor was not in default on the contract within the critical time period, the highway department did not have a claim. Arkansas State Hwy. Comm'n v. Union Indem. Ins. Co., 295 Ark. 273, 748 S.W.2d 338 (1988).

—Resident of This State.

A foreign corporation which has its principal place of business elsewhere but which established a substantial presence in Arkansas is not considered a resident, as that term is used in subdivision (2)(A) of this section, for the purpose of this subchapter. Douglass v. Levi Strauss & Co., 315 Ark. 380, 868 S.W.2d 70 (1993).

Nothing in the remainder of this subchapter makes an exception to the residency requirement. Douglass v. Levi Strauss & Co., 315 Ark. 380, 868 S.W.2d 70 (1993).

Insured was not entitled to have the state's Guaranty Fund pay the claims against it based on the fact that the insurance company of the insured was insolvent since the insured's claims were not "covered claims"; for a claim to be covered, Arkansas law required that the insured and its affiliate not have a net worth exceeding $50 million, but the insured admitted that the net worth of the Nevada corporation that had purchased all of the insured's stock exceeded that amount and the Nevada corporation's control of all of the insured's stock meant the Nevada corporation was an "affiliate" whose net worth was properly counted in determining the insured's total net worth. Harold Ives Trucking Co. v. Pickens, 355 Ark. 407, 139 S.W.3d 471 (2003).

23-90-104. Applicability — Exceptions.

This chapter shall apply to all kinds of direct insurance written by insurers licensed to transact insurance in this state but shall not be applicable to the following:

(1) Life, annuity, health, or accident and health insurance;

(2) Mortgage guaranty, financial guaranty, or other form of insurance offering protection against investment risks;

(3) Bail bonds or appearance bonds as defined in or otherwise referenced in § 17-19-101 et seq.;

(4) Credit insurance;

(5) Insurance of warranties or service contracts;

(6) Title insurance;

(7) Ocean marine insurance; and

(8) Any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.

History. Acts 1977, No. 871, § 3; A.S.A. 1947, § 66-5503; Acts 1987, No. 738, § 1; 1989, No. 417, § 3; 2001, No. 1603, § 43.

23-90-105. Construction.

This chapter shall be liberally construed to effect the purpose under § 23-90-102 which shall constitute an aid and guide to interpretation.

History. Acts 1977, No. 871, § 4; A.S.A. 1947, § 66-5504.

23-90-106. Arkansas Property and Casualty Advisory Association — Creation — Members.

(a)(1) There is created by this chapter an advisory association to be known as the "Arkansas Property and Casualty Advisory Association", herein called the "advisory association" to be composed of eight (8) insurers.

(2) The Insurance Commissioner shall appoint the insurers who will serve as the initial advisory association. Subsequent members of the advisory association shall serve for terms of office of four (4) years and shall be appointed by the commissioner for terms of four (4) years.

(b) The members of the advisory association shall be chosen to afford fair representation to all insurers subject to this chapter giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Arkansas.

(c) Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as other appointments.

(d) Members shall serve until their successors are appointed.

(e) Members shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1977, No. 871, § 14; 1983, No. 522, § 39; A.S.A. 1947, § 66-5514; Acts 1987, No. 738, § 6; 1997, No. 250, § 225.

Publisher's Notes. The terms of the members of the Arkansas Property and Casualty Advisory Association are arranged so that two terms expire every year.

Acts 1983, No. 522, § 51, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of

a law would be deemed in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

Acts 1987, No. 738, § 6, provided, in part, that, of the initial advisory association members, two shall be appointed to serve for a one-year term of office, two shall be appointed to serve for a two-year term of office, two shall be appointed to serve for a three-year term of office, and two shall be appointed to serve for a four-year term of office.

23-90-107. Arkansas Property and Casualty Advisory Association — Procedures.

(a) The State Insurance Department shall promulgate reasonable organizational rules for the Arkansas Property and Casualty Advisory Association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at advisory association meetings, and rules concerning the replacement of members.

(b)(1) The advisory association shall conduct its meetings in Little Rock, Arkansas, in the office of the Insurance Commissioner.

(2) Meetings shall be held upon call by the commissioner or upon written request of a majority of the members.

(3) Meetings shall not be open to the public. Only members of the advisory association, the commissioner, and persons authorized by the commissioner shall attend the meetings.

History. Acts 1977, No. 871, § 14; 1983, No. 522, § 39; A.S.A. 1947, § 66-5514.

Publisher's Notes. For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-90-106.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

23-90-108. Arkansas Property and Casualty Advisory Association — Powers and duties.

(a)(1) The Arkansas Property and Casualty Advisory Association shall advise and counsel with the Insurance Commissioner upon matters relating to the solvency of insurers.

(2) The commissioner may call a meeting of the association when a court of competent jurisdiction determines that an insurer is insolvent and may call a meeting of the association when he or she determines that a danger of insolvency of an insurer exists.

(3) Upon majority vote, the association shall notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner.

(4) At the meetings, the commissioner may divulge to the association any information in his or her possession and any records of the State

Insurance Department, including examination reports or preliminary reports from examiners relating to the insurer.

(5) The commissioner may summon officers, directors, and employees of an insolvent insurer, or an insurer the commissioner considers to be in danger of insolvency, to appear before the association for conference or for the taking of testimony.

(6) Members of the association shall not reveal information received in the meetings to anyone unless authorized by the commissioner or when required as witness in court.

(b) Upon request by the commissioner, the association shall attend hearings before the commissioner and meet with and advise the commissioner and his or her representatives on matters relating to the affairs of an insolvent insurer and relating to action that may be taken by the commissioner and his or her representatives to best protect the interests of persons holding covered claims against an insolvent insurer and relating to the amount and timing of partial assessments, the marshalling of assets, and the processing and handling of covered claims.

History. Acts 1977, No. 871, § 14; 1983, No. 522, § 39; A.S.A. 1947, § 66-5514; Acts 1987, No. 738, § 6.

Publisher's Notes. For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-90-106.

23-90-109. Arkansas Property and Casualty Advisory Association — Reports and recommendations.

Reports or recommendations made by the Arkansas Property and Casualty Advisory Association to the Insurance Commissioner and his or her representatives shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the association or the association itself for any report, individual report, recommendation, or individual recommendation by the association or members to the commissioner or his or her representatives.

History. Acts 1977, No. 871, § 14; 1983, No. 522, § 39; A.S.A. 1947, § 66-5514.

Publisher's Notes. For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-90-106.

23-90-110. Arkansas Property and Casualty Advisory Association — Right of officers, directors, and employees to contract — Interested parties.

(a) Any insurer that has an officer, director, or employee serving as a member of the Arkansas Property and Casualty Advisory Association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver of an insolvent insurer. The entering into any contract shall not be deemed a conflict of interest.

(b) The association or any insurer assessed under this chapter shall be an interested party under § 23-68-118.

History. Acts 1977, No. 871, § 14; 1983, No. 522, § 39; A.S.A. 1947, § 66-5514.

Publisher's Notes. For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-90-106.

23-90-111. Covered claims — Notification to insureds of insurer's insolvency.

(a) This chapter shall apply to covered claims existing prior to the determination that an insurer is an insolvent insurer and to covered claims arising within thirty (30) days after the determination of insolvency or before the policy expiration date if less than thirty (30) days after the determination of insolvency or before the insured replaces the policy or effects its cancellation, if he or she does so within thirty (30) days of the determination of insolvency.

(b) Upon the determination by a court of competent jurisdiction that an insurer is an insolvent insurer, the Insurance Commissioner shall notify the insureds of the insolvent insurer of the determination and of their rights under this chapter. The notification shall be by mail at each insured's last known address, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this state shall be sufficient.

(c) Notwithstanding any other provisions of this chapter, a covered claim shall not include any claim filed with the guaranty fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

History. Acts 1977, No. 871, § 6; A.S.A. 1947, § 66-5506; Acts 1987, No. 738, § 3.

CASE NOTES

No Claim.

Where contractor was not in default on the contract within the critical time period, the highway department did not have a claim. Arkansas State Hwy. Comm'n v. Union Indem. Ins. Co., 295 Ark. 273, 748 S.W.2d 338 (1988).

23-90-112. Estimation of amount needed to pay claims — Assessment of insurers.

(a)(1) Whenever a court of competent jurisdiction determines that an insurer has become an insolvent insurer, the receiver appointed in accordance with §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132 shall promptly estimate the amount of additional funds needed to supplement the assets of the insolvent insurer and any available amounts in the fund described in § 23-90-114 which are immediately available to the receiver for the purpose of making payment of all covered claims.

(2) Thereafter, the Insurance Commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims.

(3) The commissioner may make partial assessments as the actual need for additional funds arises for each insolvent insurer.

(b)(1) The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Arkansas by the insurer during the preceding calendar year bears to the total net direct written premium collected by all insurers, except insolvent insurers, in the State of Arkansas for the preceding calendar year.

(2) Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year.

(3) If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of insolvent insurers, assessments may be made in the next and successive calendar years.

(c) Insurers determined to be insolvent insurers by a court of competent jurisdiction shall be exempt from assessment from and after the date of that determination and until the commissioner determines that the insurer is no longer an insolvent insurer.

(d)(1) It shall be the duty of each insurer to pay the amount of its assessment to the receiver within thirty (30) days after the commissioner gives notice of the assessment, and assessments may be collected by the receiver through suits brought for that purpose.

(2) Venue for suits shall lie in Pulaski County.

(3) The receiver shall not be required to give an appeal bond in any cause arising hereunder.

(e) Funds derived from assessments under the provisions of this chapter shall not become assets of the insolvent insurer but shall be deemed a special fund loaned to the receiver for payment of covered claims. This loan shall be repayable to the extent available from the funds of the insolvent insurer, as provided in this chapter.

History. Acts 1977, No. 871, § 7; A.S.A. 1947, § 66-5507.

23-90-113. Failure to pay assessment.

(a) After notice and hearing, the Insurance Commissioner may suspend or revoke the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

(b) As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed one hundred dollars ($100) per day.

(c) Any insurer whose certificate of authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of the cancellation or surrender.

History. Acts 1977, No. 871, § 8; A.S.A. 1947, § 66-5508; Acts 1987, No. 738, § 4.

23-90-114. Accounting for and repayment of assessments.

(a)(1) Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver shall provide the insurer with a participation receipt which shall create a liability against the assessment fund maintained by the Insurance Commissioner.

(2) The assessment fund from which an advance is made to an insolvent insurer for the payment of covered claims shall be regarded as a general creditor of the insolvent insurer for the amount of funds so advanced, provided that, with reference to the remaining balance of any advances received by the receiver and not expended in payment of covered claims, the claim of the assessment fund shall have preference over other general creditors.

(3) The receiver of any insolvent insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the assessment fund and shall make a final report of the expenditure and use of these funds to the commissioner. This final report shall set forth the remaining balance, if any, from the moneys advanced from the assessment fund.

(4) The receiver shall also make any interim reports concerning the accounting and that may be required by the commissioner.

(5) Upon completion of the final report and as soon after completion as is practicable, the receiver shall refund the remaining balance of the advances to the assessment fund.

(b) Should the commissioner at any time determine that there exist moneys in the assessment fund in excess of those reasonably necessary for efficient future operation under the terms of this chapter, the commissioner shall cause the excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in § 23-90-119. If after a distribution the commissioner finds that an excess amount still exists in the fund or if there are no participation receipts on which there is an outstanding balance, the commissioner shall cause the excess amount to be deposited with the Treasurer of State for credit to the General Revenue Fund Account of the State Apportionment Fund of this state.

History. Acts 1977, No. 871, § 9; A.S.A. 1947, § 66-5509.

23-90-115. Payment of covered claims.

(a)(1) When an insurer has been determined by a court of competent jurisdiction to be an insolvent insurer, the receiver shall marshal all assets of the insolvent insurer, including, but not limited to, those which are designated as, or that constitute, reserve assets offsetting

reserve liabilities for all liabilities falling within the term "covered claim" as defined in § 23-90-103.

(2) The receiver shall apply all of the assets to the payment of covered claims but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of the assets.

(3) When all covered claims have been paid or satisfied by the receiver, any balance remaining from the liquidation or disposition of the assets shall first be applied in repayment of funds expended from assessments.

(4) These repayments shall be credited as remaining balances and be refunded as provided in § 23-90-114.

(b) In addition to authorization to make actual payment of covered claims, the receiver is specifically authorized to utilize the marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims.

(c) This chapter shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Insurance Commissioner or the receiver elsewhere in the Arkansas Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Arkansas Insurance Code dealing with delinquency proceedings.

(d) In any lawsuit brought by a receiver of an insolvent insurer for the purpose of recovering assets of the insolvent insurer, the fact that claims against the insolvent insurer have been or will be paid under the provisions of this chapter shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.

History. Acts 1977, No. 871, § 10; A.S.A. 1947, § 66-5510.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as §§ 23-60-101 — 23-60-108, 23-60-110, 23-61-101 — 23-61-112, 23-61-201 — 23-61-206, 23-61-301 — 23-61-307, 23-61-401, 23-61-402, 23-62-101 — 23-62-108, 23-62-201, 23-62-202, former 23-62-203, 23-62-204, 23-62-205, 23-63-101 [repealed], 23-63-102 — 23-63-104, 23-63-201 — 23-63-216, 23-63-301, 23-63-302, 23-63-401 — 23-63-404 [repealed], 23-63-601 — 23-63-604, 23-63-605 — 23-63-609 [repealed], 23-63-610 — 23-63-613, 23-63-701, 23-63-801 — 23-63-833, 23-63-835 — 23-63-837, 23-63-838 [repealed], 23-63-901 — 23-63-912, 23-63-1001 — 23-63-1004, 23-64-101 — 23-64-103, 23-64-201 — 23-64-205, 23-64-206 [repealed], 23-64-207, 23-64-208 [repealed], 23-64-209, 23-64-210, 23-64-211 — 23-64-213 [repealed], 23-64-214 — 23-64-221, 23-64-222 [repealed], 23-64-227, 23-64-228 [transferred], 23-64-229 [transferred], 23-65-101 — 23-65-104, 23-65-201 — 23-65-205, 23-65-301 — 23-65-319, 23-66-201 — 23-66-214, 23-66-301 — 23-66-306, 23-66-308 — 23-66-311, 23-66-313, 23-66-314, 23-68-101 — 23-68-113, 23-68-115 — 23-68-132, 23-69-101 — 23-69-103, 23-69-105 — 23-69-141, 23-69-143, 23-69-149 — 23-69-156, 23-70-101 — 23-70-124, 23-71-101 — 23-71-116, 23-72-101 — 23-72-122, 23-73-101 — 23-73-116, 23-74-101 — 23-74-105, 23-74-106 — 23-74-141 [repealed], 23-75-101 — 23-75-116, 23-75-117 [repealed], 23-75-118 — 23-75-120, 23-79-101 — 23-79-106, former 23-79-107, 23-79-109 — 23-79-128, 23-79-131 — 23-79-134, 23-79-202 — 23-79-210, 23-81-101 — 23-81-117, 23-81-120 — 23-81-136, 23-81-201 — 23-81-213, 23-82-101 — 23-82-

118, 23-84-101 — 23-84-111, 23-85-101 — 23-85-131, 23-86-101 — 23-86-104, 23-86-106 — 23-86-109, 23-86-112, 23-87-101 — 23-87-119, 23-88-101, 23-89-101, 23-89-102, 26-57-601 — 26-57-605, 26-57-607, 26-57-608, and 26-57-610.

CASE NOTES

Unearned Premiums.

Unearned premiums are in the nature of a refund of premium and do not come within the concept of payment under the policy; thus, they do not count against the policy limit and must be repaid to the insured. Hardester v. Eubanks, 292 Ark. 610, 731 S.W.2d 780 (1987).

23-90-116. Duties of receiver.

(a)(1) Covered claims against an insolvent insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132 and as ordered by the court in which the receivership is pending.

(2) However, the funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims, and, in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state.

(3) Funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of the covered claim appealing from the receiver's action shall not increase the liability of the funds, provided that the receiver may review his or her action in approving a covered claim and for just cause modify the approval at any time during the pendency of the receivership.

(b)(1) If a receiver is appointed to handle the affairs of an insolvent insurer, the receiver shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution.

(2)(A) Upon determination by the receiver that actual payment of covered claims should be made, the receiver shall give notice of the determination to claimants falling within the class of covered claims.

(B) The receiver shall mail the notice to the latest address reflected in the records of the insolvent insurer.

(C) If the records of the insolvent insurer do not reflect the address of a claimant, the receiver may give notice by publication in a newspaper of general circulation.

(D) This notice shall state the time within which the claimant must file his or her claim with the receiver, which time shall in no

event be less than ninety (90) days from the date of the mailing or publication of the notice.

(3) The receiver may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the receiver to determine the legality or the amount due under a covered claim.

(c)(1) Upon determination by the receiver that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the insolvent insurer under a liability insurance policy issued or assumed by the insurer, if the cause of action meets the definition of covered claim, shall have the right to file a claim with the receiver regardless of the fact that the claim may be contingent, and this claim may be approved as a covered claim if:

(A) It may be reasonably inferred from the proof presented upon the claim that the person would be able to obtain a judgment upon the cause of action against the insured;

(B) The person furnishes suitable proof that no further valid claims against the insurer arising out of his or her cause of action other than those already presented can be made; and

(C) The total liability of the insurer to all claimants arising out of the same act of its insured is no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation.

(2) In the proceedings of considering covered claims, no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a receiver shall be considered as evidence of liability or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a receiver shall be considered as conclusive evidence either of the liability of the insured to the person upon the cause of action or of the amount of damages to which the person is therein entitled.

(d) The acceptance of payment from the receiver by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the insolvent insurer of any cause of action or right of the holder of the covered claim arising from the occurrence upon which the covered claim is based. The assignment shall be to the extent of the amount accepted or the value of the benefits provided by the contracts of reinsurance or assumption of liabilities or substitution.

History. Acts 1977, No. 871, § 11; A.S.A. 1947, § 66-5511.

23-90-117. Right of recovery.

(a)(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his or her right under the policy.

(2) Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.

(b)(1) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim shall be required to exhaust first his or her right under the program. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the program.

(2) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the location of the property. If it is a workers' compensation claim, he or she shall seek recovery first from the association of the residence of the claimant.

(3) Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History. Acts 1977, No. 871, § 12; A.S.A. 1947, § 66-5512; Acts 1987, No. 738, § 5.

CASE NOTES

Purpose.

The Guaranty Fund is designed to protect individuals, not pay double benefits. Orren v. Smackover Nursing Home, 46 Ark. App. 38, 876 S.W.2d 600 (1994).

The Guaranty Fund is not responsible for paying medical bills previously paid by employee's insurance carrier. Orren v. Smackover Nursing Home, 46 Ark. App. 38, 876 S.W.2d 600 (1994).

23-90-118. Issuance of new or renewal policies.

(a) An insolvent insurer placed in receivership for which assessments have been made under the provisions of this chapter shall not be authorized, upon release from receivership, to issue new or renewal insurance policies until such time as the insolvent insurer has repaid in full the entire amount advanced to it from the assessment fund set out in § 23-90-114. However, upon application of the Arkansas Property and Casualty Advisory Association and after a hearing, the Insurance Commissioner may permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of the advances.

(b) In approving the plan, the commissioner may place such restrictions upon the issuance of new or renewal policies as the commissioner deems necessary to the implementation of the plan.

(c) The commissioner shall give ten (10) days' notice of the hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer. The holders of the receipts shall be entitled to appear at and participate in the hearing.

History. Acts 1977, No. 871, § 13; A.S.A. 1947, § 66-5513.

23-90-119. Assessment as credit against taxes.

(a) Any assessment paid by an insurer under this chapter shall be allowed to an insurer as a credit against its premium tax payable under §§ 26-57-601 — 26-57-605 and 26-57-607.

(b) The tax credit referred to in this section shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment.

(c) The balance of any assessment paid by the insurer and not claimed as a tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in the annual statements.

(d) However, any insurer which neglects to take the twenty percent (20%) credit during the year allowable will not be allowed to carry over the credit for the following year or years.

History. Acts 1977, No. 871, § 15; 1983, No. 522, § 40; 1985, No. 804, § 26; A.S.A. 1947, § 66-5515; Acts 1987, No. 738, § 7; 1999, No. 881, § 16.

Publisher's Notes. For cumulative effect of 1983 amendment to this section, see Publisher's Notes to § 23-90-106.

Acts 1985, No. 804, § 32, provided, in part, that the act would be cumulative of prior laws, and that no prior law or part of a law would be deemed to be in conflict with the act unless failure to do so would prevent giving effect to an explicit provision of the act.

23-90-120. Liability of insurer, commissioner, etc.

There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this chapter or its agents or employees, the Arkansas Property and Casualty Advisory Association, or the Insurance Commissioner or his or her representatives for any action by them in the performance of their powers and duties under this chapter.

History. Acts 1977, No. 871, § 16; A.S.A. 1947, § 66-5516.

23-90-121. Certain advertisements, announcements, and statements prohibited — Exception.

(a) No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in other ways, any advertisement, announcement, or statement which uses the existence of the Arkansas Property and Casualty Advisory Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter.

(b) However, this section shall not apply to the association or to any other entity which does not sell or solicit insurance.

History. Acts 1977, No. 871, § 18; A.S.A. 1947, § 66-5518.

23-90-122. Rules and regulations.

The State Insurance Department is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this chapter, and in augmentation thereof.

History. Acts 1977, No. 871, § 17; A.S.A. 1947, § 66-5517.

23-90-123. Appeal of orders.

Any order of the Insurance Commissioner under this chapter may be appealed as provided by § 23-61-307.

History. Acts 1977, No. 871, § 19; A.S.A. 1947, § 66-5519; Acts 1987, No. 738, § 8.

CHAPTER 91

PREPAID LEGAL INSURANCE

SUBCHAPTER.

1. General Provisions. [Reserved.]
2. Arkansas Legal Insurance Act.
3. Long-Term Care Liability Insurance. [Repealed.]

Publisher's Notes. Acts 2001, No. 1555, § 17, substituted "Prepaid Legal Insurance" for "Professional Liability Insurance" in the chapter heading.

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — Arkansas Legal Insurance Act

SECTION.
23-91-201. Title.
23-91-202. Construction and purposes.
23-91-203. Definitions.
23-91-204. Applicability of insurance law.
23-91-205. Applicability of unauthorized insurance law.
23-91-206. Exemption.
23-91-207. Penalty provisions — Applicability of §§ 23-60-108 and 23-60-109.
23-91-208. Authorization required.
23-91-209. Conditions for issuing certificate of authority.
23-91-210. Regulation of policy forms.
23-91-211. Regulation of rates.
23-91-212. Approval of forms and rates.
23-91-213. Segregated accounts required — Exception.
23-91-214. Management and exclusive agency contracts.
SECTION.
23-91-215. Annual report.
23-91-216. Reserves required.
23-91-217. Investment of assets.
23-91-218. Trade practices.
23-91-219. Licensing of agents.
23-91-220. Examination of insurer's affairs.
23-91-221. Professional ethics.
23-91-222. Revocation of certificate of authority.
23-91-223. Rehabilitation and liquidation.
23-91-224. Authority to promulgate rules.
23-91-225. Fees.
23-91-226. Taxation.
23-91-227. Public documents.

Cross References. Manner of payment of claims, § 23-63-107.

Effective Dates. Acts 1987, No. 456, § 31: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered in the subject of this act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 580, § 29, provided: "The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department's regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12,

2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 7 Am. Jur. 2d, Attys., § 198, 43 Am Jur. 2d, Ins., § 726.

U. Ark. Little Rock L.J. Survey of Arkansas Law, Insurance, 1 U. Ark. Little Rock L.J. 210.

23-91-201. Title.

This subchapter shall be cited as the "Arkansas Legal Insurance Act".

History. Acts 1977, No. 368, § 26; A.S.A. 1947, § 66-5426.

23-91-202. Construction and purposes.

This subchapter shall be interpreted liberally in order to achieve the following purposes:

(1) To encourage the development of effective and economically sound methods of making legal services more readily available;

(2) To protect the interests of the users of legal services and of the public of this state with a minimum of restrictions on experimentation with new forms of organization, administration, or benefits;

(3) To seek to have the risk inherent in experimentation borne by the promoters of new plans rather than by the consumers;

(4) To permit and encourage the providing of legal services through persons other than professional insurers subject to practical and reasonable financial and regulatory requirements;

(5) To permit and encourage fair and effective competition among the various systems of financing legal services; and

(6) To ensure that each person being provided with legal insurance has the right to seek performance of covered legal services by the attorney of his or her choice. The attorney shall be required to reasonably comply with the plan provisions.

History. Acts 1977, No. 368, § 1; A.S.A. 1947, § 66-5401.

23-91-203. Definitions.

As used in this subchapter:

(1) "Commissioner" means the Insurance Commissioner;

(2) "Insurer" means any person who obtains a certificate of authority under this subchapter;

(3)(A) "Legal insurance" means that assumption of a contractual obligation to provide, during a specified interval of time, specified legal services or reimbursement for legal expenses in consideration of a specified payment, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. It does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages. The following are not considered insurance under the insurance laws of this state:

(i) Retainer contracts made with individual clients with the fees based on estimates of the nature and amount of services that will be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters such as class actions;

(ii) The providing of no benefits other than consultation and advice in connection with, or a part of, referral services;

(iii) The providing of limited legal services regarding simple legal matters on an informal basis, not involving a legally binding promise, in the context of an employment, educational, or similar relationship;

(iv) Legal services provided by unions or employee associations to their members in matters relating to employment or occupation; and

(v) Legal services provided by an agency of the federal or state government or a subdivision thereof to its employees.

(B) "Contractual obligation" in subdivision (3)(A) of this section includes any arrangement in which those persons for whom services are to be provided under the arrangement have reasonable expectations of enforceable rights; and

(4) "Person" means the definition as used in § 23-60-102.

History. Acts 1977, No. 368, § 2; A.S.A. 1947, § 66-5402.

23-91-204. Applicability of insurance law.

(a) The provisions of the insurance law apply generally to legal insurance offered by insurers licensed to write other kinds of insurance. However, legal insurance sold by insurers under a certificate of authority obtained under this subchapter shall be regulated by the provisions of §§ 23-91-202, 23-91-203, 23-91-206, 23-91-208 — 23-91-212, 23-91-214, 23-91-219, 23-91-221, 23-91-224, and 23-91-226 instead of corresponding sections of the Arkansas Insurance Code.

(b) Orders, rules, or regulations of the Insurance Commissioner issued under the provisions of this subchapter shall be subject to the provisions of the general insurance laws and the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., relating to hearings and appeals.

(c) Except as otherwise provided in this subchapter, the provisions of the general insurance law shall not apply to insurers authorized under this subchapter.

History. Acts 1977, No. 368, §§ 22, 23; A.S.A. 1947, §§ 66-5422, 66-5423.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-91-205. Applicability of unauthorized insurance law.

Subject to the provisions of this subchapter, the relevant and applicable provisions of the Unauthorized Insurers Process Act, § 23-65-201 et seq., and the provisions of §§ 23-65-101 and 23-65-102 apply to persons transacting the business of legal insurance.

History. Acts 1977, No. 368, § 21; A.S.A. 1947, § 66-5421.

23-91-206. Exemption.

(a)(1) This subchapter does not apply to any person not domiciled in this state but issuing only group, blanket, or franchise policies or certificates to certificate holders or policyholders who reside in this state if fewer than twenty-five percent (25%) of the certificate holders or policyholders reside in this state and the person is regulated to a comparable extent by another state in which a larger number of certificate holders or insureds reside.

(2)(A) However, any person who is exempt from the provisions of this subchapter pursuant to this section shall, prior to the issuance of any group, blanket, or franchise policies or certificates in this state, file these policies or certificates with the Insurance Commissioner for informational purposes, together with a document to support the person's exempt status under this section.

(B) Also, each person shall file annually with the commissioner, on or before April 15, a report to verify that the exemption is still valid.

(b)(1) Prior to administering a legal referral services program, or prior to enrollment of members in a program in this state, any person who is exempt from the provisions of this subchapter shall file with the commissioner program materials and documents to support the program's exempt status under this subchapter.

(2) Subsequent to the commissioner's approval of the exemption of the program from the provisions of this subchapter, the person shall promptly file documents referencing any modifications or changes in the program for the commissioner's review and determination as to whether the program as modified is exempt from the provisions of this subchapter.

History. Acts 1977, No. 368, § 3; A.S.A. 1947, § 66-5403; Acts 1987, No. 619, § 1.

23-91-207. Penalty provisions — Applicability of §§ 23-60-108 and 23-60-109.

The relevant and applicable provisions of §§ 23-60-108 and 23-60-109 apply to violations of this subchapter.

History. Acts 1977, No. 368, § 24; A.S.A. 1947, § 66-5424.

23-91-208. Authorization required.

(a) No person may transact the business of legal insurance in this state without first obtaining a certificate of authority under this subchapter.

(b)(1) Any person may apply to the Insurance Commissioner for, and obtain, a certificate of authority to transact the business of legal insurance in compliance with this subchapter.

(2) This section does not by itself enlarge the powers of any corporation given by its articles of incorporation or charter but does authorize a corporation formed under the general business, insurance, or general nonprofit corporation laws of this state, including hospital service corporations, medical service corporations, and hospital and medical service corporations, to include in its power the authority to transact the business of legal insurance.

(c)(1) Any application shall be in a form prescribed by the commissioner. If the applicant is not domiciled in this state, the application must be accompanied by a power of attorney executed by the applicant appointing an Arkansas resident as its registered agent for service of process, to be filed in writing with the commissioner and his or her successors in office, as the true and lawful attorney of the applicant, in and for this state, upon whom all lawful process in any legal action or proceeding against the applicant, on a cause of action arising in this state, may be served.

(2) On and after January 1, 2003, all foreign and alien insurers licensed under this chapter shall file with the commissioner a designation of an Arkansas resident as an agent for service of legal process, and the commissioner shall maintain a listing in conformity with § 23-63-301 et seq.

History. Acts 1977, No. 368, § 3; 1979, No. 942, § 19; A.S.A. 1947, § 66-5403; Acts 2001, No. 1604, § 116.

23-91-209. Conditions for issuing certificate of authority.

(a) Upon receipt of an application for a certificate of authority, the Insurance Commissioner shall issue or deny a certificate pursuant to this subchapter within sixty (60) days of the application. This may be extended for an additional thirty (30) days by notice to the applicant prior to the expiration of the first sixty (60) days. A certificate of authority shall be issued upon payment of the application fee pre-

scribed in § 23-91-225 if the commissioner is satisfied that the following conditions are met:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and of good reputation;

(2) The applicant has paid-in capital in an amount not less than one hundred thousand dollars ($100,000) and additional working capital or surplus funds in an amount deemed by the commissioner to be adequate in relation to the proposed plan of operation; and

(3) The applicant demonstrates the willingness and ability to assure that the promised benefits can be provided. In making this determination, the commissioner shall consider so far as applicable:

(A) Any agreements with lawyers or paralegal personnel for the provisions of legal services;

(B) The financial soundness of the applicant's arrangements for legal services and the schedule of rates proposed to be used in connection therewith;

(C) Any agreement with another person authorized under this subchapter, an insurer licensed under the general insurance laws to do business in this state, a reinsurer eligible under the laws or regulations of this state to provide reinsurance, or an agency of the federal or state government for insuring the payment of the cost of legal services or the provision for automatic applicability of an alternative coverage in the event the insurer is unable to perform its obligation;

(D) Any deposit of securities, in kind and an amount determined to be appropriate by the commissioner, as a guarantee that the obligations to provide the promised benefits will be performed; and

(E) If the applicant is licensed as an insurer under other insurance laws, whether the applicant has complied with the requirements of those laws.

(b) A certificate of authority shall be issued in accordance with this subchapter and may be continued within the applicable provisions of § 23-63-211, but reference therein to § 23-63-216 and payment of taxes shall instead refer to the applicable provision of this subchapter.

History. Acts 1977, No. 368, § 4; A.S.A. 1947, § 66-5404; Acts 1987, No. 456, § 26; 2001, No. 1604, § 117.

23-91-210. Regulation of policy forms.

(a)(1) Each contractual obligation for legal insurance shall be evidenced by a policy or master policy.

(2) Legal insurance may be written on an individual, group, blanket, or franchise basis.

(3) Each person insured under a group policy must be issued a certificate of coverage.

(4) No legal insurance policy or certificate of any kind may be issued or delivered in this state unless and until a copy of the form thereof has

been filed with the Insurance Commissioner and approved by him or her except as provided in § 23-91-206.

(b) The forms must meet the following requirements:

(1) Policies must contain a detailed list and description of the legal services promised or the legal matters for which expenses are to be reimbursed and the amount of reimbursement;

(2) Policies and certificates must indicate prominently the name of the insurer and the full address of its principal place of business;

(3) Certificates issued under group policies may summarize the terms of the master contract but must contain a full and clear statement of the benefits provided; and

(4)(A) No policy shall unreasonably restrict the right of any person covered by legal insurance to seek performance of legal services by the attorney of his or her choice in a matter covered by the policy.

(B)(i) If the policy contemplates the use of a prearranged panel of attorneys to render the legal services covered under the policy, the commissioner shall not approve that policy unless the policy also authorizes payment for covered services rendered by an insured's attorney who is not a member of the panel.

(ii) Payments to attorneys who are not members of the panel shall be reasonably equivalent to the cost incurred by the insurer when similar services are rendered by attorneys who are members of any panel.

(c) The commissioner may disapprove a form if the commissioner finds that it:

(1) Does not meet the requirements of subsection (b) of this section;

(2) Is unfair, unfairly discriminatory, misleading, obscure, or encourages misrepresentation or misunderstanding of the contract, including cases in which the form:

(A) Provides coverage or benefits that are too restricted to achieve the purposes of which the policy is designed;

(B) Fails to attain a reasonable degree of readability, simplicity, and conciseness; or

(C) Is misleading, deceptive, or obscure because of its physical aspects such as format, typography, style, color, material, or organization;

(3) Provides coverage or benefits or contains other provisions that would endanger the solidity of the insurer; or

(4) Is contrary to law.

History. Acts 1977, No. 368, § 5; A.S.A. 1947, § 66-5405.

23-91-211. Regulation of rates.

(a) Rate filings shall be subject to the following procedures and requirements:

(1) Every insurer shall file with the Insurance Commissioner every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use;

(2) Every filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this subchapter, the commissioner may require the insurer to furnish the information upon which it supports the filing. Any filing may be supported by:

(A) The experience or judgment of the insurer or rating organization making the filing;

(B) The experience of other insurers or rating organizations; and

(C) Any other factor which the insurer or rating organization deems relevant; and

(3) A filing and any supporting information shall be open to public inspection after the filing becomes effective.

(b) The rates must meet the following requirements:

(1) They must be established and justified in accordance with generally accepted insurance principles, including, but not limited to, the experience or judgment of the insurer making the rate filing or actuarial computations; and

(2) They may not be excessive, inadequate, or unfairly discriminatory in relation to the benefits offered. Rates are not unfairly discriminatory because they are averaged broadly among persons insured under group, franchise, or blanket policies.

(c) By written order, the commissioner may suspend or modify the requirement of filing for any risk or group or class of risk, the rates for which cannot practically be filed before they are used.

History. Acts 1977, No. 368, § 5; A.S.A. 1947, § 66-5405.

23-91-212. Approval of forms and rates.

(a) If the Insurance Commissioner determines that any form reviewed under § 23-91-210 or any schedule of rates reviewed under § 23-91-211 complies with the requirements of those sections, the commissioner shall approve the filing within thirty (30) days, which may be extended for an additional thirty (30) days by notice in writing to the person making the filing prior to the expiration of the first thirty (30) days.

(b) If the commissioner disapproves a filing, the commissioner shall notify the person making it in writing specifying therein the reasons for his or her disapproval.

(c) A hearing shall be granted within thirty (30) days after a request in writing by any person aggrieved by the decision of the commissioner.

(d) If the commissioner does not disapprove a form or schedule of rates within thirty (30) days of the filing or an extension thereof as provided in subsection (a) of this section, it shall be deemed approved.

(e) After notice and hearing, the commissioner may disapprove any rate that has been previously approved or deemed approved.

(f) The commissioner may require the submission of additional relevant information reasonably necessary to determine whether to approve or disapprove a filing made pursuant to § 23-91-210 or § 23-91-211.

History. Acts 1977, No. 368, § 5; A.S.A. 1947, § 66-5405.

23-91-213. Segregated accounts required — Exception.

Except for employee welfare benefit plans regulated by the Employee Retirement Income Security Act of 1974, persons transacting the business of legal insurance, and any other business than insurance shall transact legal insurance wholly within a segregated account in accordance with the following requirements:

(1) The segregated account must satisfy the financial requirements for issuance of a certificate of authority;

(2)(A)(i) Except under subdivisions (6) and (7) of this section, the income and assets attributable to a segregated account shall always remain identifiable with the account.

(ii) However, unless the Insurance Commissioner so orders, the assets need not be kept physically separate from other assets of the person.

(B) The income, gains, and losses, whether or not realized, from assets attributable to a segregated account shall be credited to or charged against the account without regard to other income, gains, or losses of the person;

(3) Except under subdivision (4) of this section, assets attributable to a segregated account shall not be chargeable with any liabilities arising out of any other business of the person, nor shall any assets not attributable to the account be chargeable with any liabilities arising out of it;

(4) Claims remaining unpaid after completion of any liquidation under the applicable and relevant provisions of §§ 23-68-111 and 23-68-112 shall have liens on the interests of shareholders, if any, in all of the person's assets that are not liquidated. The segregated account shall be deemed an insurer within the meaning of § 23-68-102;

(5) Assets allocated to segregated accounts are the property of the person, which is not and shall not hold itself out to be a trustee of the assets;

(6) A person may allocate a portion or part of a particular asset to the segregated account; and

(7) By an identifiable act, the person may transfer assets to or from the segregated account if:

(A) The terms are fair and reasonable; and

(B) The books, accounts, and records of each party are maintained so as to clearly and accurately disclose the precise nature and details of the transaction.

History. Acts 1977, No. 368, § 6; A.S.A. 1947, § 66-5406.

U.S. Code. The Employee Retirement Income Security Act of 1974, referred to in this section, is primarily codified as 29 U.S.C. § 1001 et seq.

23-91-214. Management and exclusive agency contracts.

(a) No insurer may enter into any exclusive agency contract or management contract unless the contract is first filed with the Insurance Commissioner and not disapproved under this section within thirty (30) days after filing or after such reasonable extended period as the commissioner may specify by notice given within the thirty (30) days.

(b) The commissioner shall disapprove a contract under subsection (a) of this section if the commissioner finds that:

(1) It subjects the insurer to excessive charges;

(2) The contract extends for an unreasonable period of time;

(3) The contract does not contain fair and adequate standards of performance;

(4) The persons empowered under the contract to manage the insurer are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the insurer with due regard for the interests of its insureds, creditors, or the public; or

(5) The contract contains provisions which impair the interests of the insurer's insureds or creditors of the public in this state.

History. Acts 1977, No. 368, § 7; A.S.A. 1947, § 66-5407.

23-91-215. Annual report.

Each insurer shall annually, on or before March 1, file with the Insurance Commissioner a report verified by at least two (2) principal officers. The report shall be on forms prescribed by the commissioner and shall include:

(1) A financial statement of the insurer's legal insurance business including:

(A) Its balance sheet; and

(B) Its receipts and disbursements for the preceding year;

(2) Any material changes in the information submitted pursuant to § 23-91-209;

(3) Such information about the number of persons protected and terminated as may be prescribed by the commissioner; and

(4) Such other information relating to the performance of the insurer as is necessary to enable the commissioner to carry out his or her duties under this subchapter.

History. Acts 1977, No. 368, § 8; A.S.A. 1947, § 66-5408; Acts 1987, No. 456, § 27.

23-91-216. Reserves required.

An insurer must maintain the reserves necessary for the sound operation of the business including unearned premium reserves, and the amount and manner of calculating these reserves shall be determined by the provisions of § 23-63-601 et seq.

History. Acts 1977, No. 368, § 9; A.S.A. 1947, § 66-5409; Acts 2001, No. 1566, § 20.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-91-217. Investment of assets.

The investable funds generated through the transaction of the business of legal insurance by persons who are not licensed to transact other lines of insurance shall be invested in securities or other investments permitted by the laws of this state for the investment of assets of life insurers or in such other securities or investments as the Insurance Commissioner shall permit.

History. Acts 1977, No. 368, § 10; A.S.A. 1947, § 66-5410.

23-91-218. Trade practices.

The Trade Practices Act, § 23-66-201 et seq., and §§ 23-66-301 — 23-66-314 and 23-66-316 apply to persons transacting the business of legal insurance except as is inconsistent with this subchapter.

History. Acts 1977, No. 368, § 11; A.S.A. 1947, § 66-5411.

23-91-219. Licensing of agents.

(a) Agents shall be licensed in accordance with such provisions as the Insurance Commissioner in his or her discretion deems applicable under § 23-64-101 et seq., §§ 23-64-201 — 23-64-205, 23-64-207, 23-64-209, 23-64-210, 23-64-214 — 23-64-221, 23-64-223 — 23-64-227, and the Producer Licensing Model Act, § 23-64-501 et seq.

(b) The commissioner may develop and administer to license applicants such examination as he or she deems appropriate.

History. Acts 1977, No. 368, § 12; A.S.A. 1947, § 66-5412; Acts 1987, No. 619, § 2; 2001, No. 580, § 23.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-91-220. Examination of insurer's affairs.

(a) The Insurance Commissioner shall make an examination of the affairs of any insurer as often as the commissioner deems it necessary for the protection of the interests of the people of this state.

(b) The following sections shall apply to examinations conducted pursuant to subsection (a) of this section:

(1) Examination of managers and promoters, § 23-61-202;
(2) Examiners, § 23-61-203;
(3) Examination — Records and appraisals, § 23-61-204;
(4) Examination reports, § 23-61-205; and
(5) Examination expense, § 23-61-206.

History. Acts 1977, No. 368, § 13; A.S.A. 1947, § 66-5413.

23-91-221. Professional ethics.

The Insurance Commissioner shall report to the Attorney General for reference to the Supreme Court any information which the commissioner considers to be of substance and of possible violation of the Arkansas Rules of Professional Conduct as adopted by the Supreme Court.

History. Acts 1977, No. 368, § 14; A.S.A. 1947, § 66-5414; Acts 2005, No. 1962, § 110.

23-91-222. Revocation of certificate of authority.

The Insurance Commissioner may suspend, revoke, or refuse to renew any certificate of authority issued to a person transacting the business of legal insurance under this subchapter pursuant to and consistent with the relevant provisions of §§ 23-63-212 — 23-63-215.

History. Acts 1977, No. 368, § 15; A.S.A. 1947, § 66-5415.

23-91-223. Rehabilitation and liquidation.

The relevant provisions of §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-68-132 shall apply to a person transacting the business of legal insurance under the provisions of this subchapter.

History. Acts 1977, No. 368, § 16; A.S.A. 1947, § 66-5416.

23-91-224. Authority to promulgate rules.

The Insurance Commissioner may promulgate such reasonable rules or regulations as are necessary or proper to carry out the provisions of this subchapter.

History. Acts 1977, No. 368, § 17; A.S.A. 1947, § 66-5417.

23-91-225. Fees.

Every person subject to this subchapter shall pay to the Insurance Commissioner the fees required by the applicable and relevant provisions of § 23-61-401.

History. Acts 1977, No. 368, § 18; A.S.A. 1947, § 66-5418.

23-91-226. Taxation.

(a) Taxation on legal insurance premiums shall be fixed at the rate of two and one-half percent (2.5%) of direct written premium income in Arkansas, after deduction for dividends paid to policyholders and returned premiums, and shall be due and payable in estimated quarterly installments and reconciled annually at the time of filing the insurer's annual report as required by § 23-91-215.

(b) The Insurance Commissioner shall deposit all premium taxes collected under this section in the State Treasury as general revenues.

History. Acts 1977, No. 368, § 19; A.S.A. 1947, § 66-5419; Acts 1987, No. 456, § 28; 1987, No. 1033, § 4.

Publisher's Notes. Acts 1987, No. 1033, § 10, provided: "The provisions of this Act as to premium taxes shall apply to all premiums which are collected in calendar year 1987 upon which the premium tax is reported and paid in 1988, and the provisions of this Act as to income taxes shall apply to all income years beginning on or after January 1, 1987."

23-91-227. Public documents.

All applications, filings, and reports required under this subchapter shall be treated as public documents.

History. Acts 1977, No. 368, § 20; A.S.A. 1947, § 66-5420.

Subchapter 3 — Long-Term Care Liability Insurance

SECTION.
23-91-301 — 23-91-309. [Repealed.]

23-91-301 — 23-91-309. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 1484, § 8. The subchapter was derived from the following sources:

23-91-301. Acts 2001, No. 1825, § 1.
23-91-302. Acts 2001, No. 1825, § 1.
23-91-303. Acts 2001, No. 1825, § 1.
23-91-304. Acts 2001, No. 1825, § 1.
23-91-305. Acts 2001, No. 1825, § 1.
23-91-306. Acts 2001, No. 1825, § 1.
23-91-307. Acts 2001, No. 1825, § 1.
23-91-308. Acts 2001, No. 1825, § 1.
23-91-309. Acts 2001, No. 1825, § 1.

CHAPTER 92

MULTIPLE EMPLOYER TRUSTS AND SELF-INSURED PLANS

SUBCHAPTER.
1. General Provisions.
2. Third-party Administrators.
3. Arkansas Employee Leasing Act. [Repealed.]
4. Arkansas Professional Employer Organization Recognition and Licensing Act.

Subchapter 1 — General Provisions

SECTION.
23-92-101. Registration or licensure required.

Effective Dates. Acts 1985, No. 795, § 4: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that all health care plans should be registered with the Insurance Commissioner; that such is not now provided by law and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 516, § 7: Mar. 18, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unauthorized insurance products are a danger to Arkansas insurance consumers; that unauthorized persons and entities have collected premiums from Arkansas insurance consumers but have not paid claims; that the sale of unauthorized insurance products has resulted in hundreds of thousands of dollars in unpaid medical bills in Arkansas; that Arkansas insurance consumers should be able to rely on their insurance producers to sell them products authorized to be sold in Arkansas; and that unauthorized products continue to be sold in Arkansas; and that these changes are immediately necessary to enable the State Insurance Department to take immediate action against unauthorized persons and entities and to require insurance producers to ensure that the products they sell are authorized. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health,

and safety, shall become effective on: (1) The date of its approval by the Governor; (2) However, if the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date that last house overrides the veto."

23-92-101. Registration or licensure required.

(a) "Multiple employer welfare arrangement" has the same meaning as under 29 U.S.C. § 1002(40), as it existed on January 1, 2003.

(b)(1) Every fully insured multiple employer trust and fully insured multiple employer welfare arrangement that intends to provide benefits to citizens of this state shall register with the Insurance Commissioner prior to soliciting or enrolling members or prior to conducting any other business activity in Arkansas.

(2)(A) Each fully insured multiple employer trust and fully insured multiple employer welfare arrangement under this section that is conducting any business activity in Arkansas as of March 18, 2003, shall register with the commissioner no later than July 1, 2003.

(B) After the initial registration, each fully insured multiple employer trust and fully insured multiple employer welfare arrangement under this section that conducts business in Arkansas shall thereafter register with the commissioner no later than January 1 of each year for as long as it continues to do business in Arkansas.

(c)(1) A multiple employer trust or multiple employer welfare arrangement that is not fully insured must obtain a certificate of authority under regulations promulgated by the commissioner before doing business in Arkansas.

(2) In order to remain licensed, a multiple employer trust or multiple employer welfare arrangement that is not fully insured must comply with all Arkansas laws that are not inconsistent with the Employee Retirement Income Security Act of 1974, as it existed on January 1, 2003.

(3)(A) The commissioner shall adopt rules regulating multiple employer trusts and multiple employer welfare arrangements that are not fully insured.

(B) The rules shall include information and procedures concerning:

(i) The criteria and application for obtaining a certificate of authority from the State Insurance Department to conduct business in Arkansas;

(ii) The benefits to be offered;

(iii) Financial requirements;

(iv) Fees;

(v) Insolvency procedures;

(vi) Examinations;

(vii) Filing of forms and rates;

(viii) Written disclosures and other consumer protections;

(ix) Reporting requirements;

(x) Excess or stop loss insurance; and

(xi) Other factors the commissioner deems necessary for the effective regulation of multiple employer welfare trusts and multiple employer welfare arrangements that are not fully insured.

History. Acts 1985, No. 795, §§ 1, 2; A.S.A. 1947, §§ 66-6001, 66-6002; Acts 2001, No. 1603, § 44; 2003, No. 516, § 6; 2005, No. 1697, § 22.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

U.S. Code. The Employee Retirement Income Security Act of 1974, referred to in this section, is codified as 29 U.S.C.S. § 1001 et seq.

Subchapter 2 — Third-party Administrators

SECTION.
23-92-201. Definition.
23-92-202. Written agreement required.
23-92-203. Certificate of registration.
23-92-204. Bond required — Exceptions.
23-92-205. Payments to administrator — Presumptions.
23-92-206. Collection of premiums, etc. — Deposits and withdrawals.
23-92-207. Books and records.
23-92-208. Compensation.

Effective Dates. Acts 1985, No. 796, § 11: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that administrators should be registered with the Insurance Commissioner; that such is not now provided by law and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 833, § 3: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that the third party administrators operating pursuant to Administrative Services agreement and assumes no financial responsibility, should not be required to post a bond with the State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it

shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-92-201. Definition.

As used in this subchapter, "third-party administrator" means any person, firm, or partnership that collects or charges premiums from or adjusts or settles claims on residents of this state in connection with life or accident and health coverage provided by a self-insured plan or a multiple employer trust or multiple employer welfare arrangement. "Third-party administrator" includes administrative-services-only contracts offered by insurers and health maintenance organizations but does not include the following persons:

(1) An employer, for its employees or for the employees of a subsidiary or affiliated corporation of the employer;

(2) A union, for its members;

(3) An insurer or health maintenance organization licensed to do business in this state;

(4) A creditor, for its debtors, regarding insurance covering a debt between them;

(5) A credit card-issuing company that advances for or collects premiums or charges from its credit card holders as long as that company does not adjust or settle claims;

(6) An individual who adjusts or settles claims in the normal course of his or her practice or employment and who does not collect charges or premiums in connection with life or accident and health coverage; or

(7) An agency licensed by the Insurance Commissioner and performing duties pursuant to an agency contract with an insurer authorized to do business in this state.

History. Acts 1985, No. 796, § 1; A.S.A. 1947, § 66-6003; Acts 2001, No. 1603, § 45; 2005, No. 1697, § 23.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-92-202. Written agreement required.

A third-party administrator may act in that capacity only if he or she has a written agreement with a self-insured plan or trust. The agreement shall be maintained by the third-party administrator and subject to review by the Insurance Commissioner.

History. Acts 1985, No. 796, § 2; A.S.A. 1947, § 66-6004.

23-92-203. Certificate of registration.

(a) No person shall act or hold himself or herself out as an administrator unless he or she obtains a certificate of registration from the Insurance Commissioner.

(b) The certificate may be obtained by submitting an application on a form prescribed by the commissioner, paying a twenty-five dollar ($25.00) filing fee, and placing with the commissioner a surety bond as described in § 23-92-204.

(c) Each application shall have attached to it a list of all self-insured plans and trusts that have entered into service contracts with the applicant for administrative services. Every administrator shall update the list whenever changes occur.

(d) The certificate shall be issued by the commissioner unless, after a hearing, the commissioner determines that the applicant is:

(1) Not competent;

(2) Not trustworthy;

(3) Not financially responsible; or

(4) A convicted felon.

(e) Each certificate of registration shall be valid for the year issued and shall be renewed each year thereafter by submitting a twenty-five dollar ($25.00) annual fee.

(f) After conducting a hearing and finding that an administrator has violated any of the requirements of this subchapter or fails to meet the requirements for the issuance of a certificate, the commissioner may revoke or suspend the certificate of registration.

History. Acts 1985, No. 796, §§ 7, 9; A.S.A. 1947, §§ 66-6009, 66-6011.

23-92-204. Bond required — Exceptions.

(a) Every applicant for a certificate of registration shall file with the application, and shall thereafter maintain in force while operating under the registration, a bond in favor of the people of the State of Arkansas executed by an authorized insurer. The bond shall have a total aggregate liability of twenty-five thousand dollars ($25,000). The bond shall be conditioned upon the full accounting and due payment to the person entitled thereto of any funds coming into the possession of the administrator.

(b) The bond shall remain in force until released by the Insurance Commissioner, or until cancelled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond on thirty (30) days' advance written notice to both the administrator and the commissioner.

(c) Any applicant for a certificate of registration or for a renewal of a certificate shall not be required to post a bond pursuant to subsection

(a) of this section if the applicant operates only pursuant to an administrative services agreement and does not collect, receive, or remit funds on the behalf of insureds.

History. Acts 1985, No. 796, § 8; A.S.A. 1947, § 66-6010; Acts 1987, No. 833, § 1.

23-92-205. Payments to administrator — Presumptions.

(a) When a self-insured plan or a trust utilizes the services of an administrator, the payment of premiums or charges to the administrator by the covered individual are presumed to have been received by the self-insured plan or trust.

(b) The payment of claims or the return of premiums to the administrator are not presumed to have been paid to the covered individual or claimant until the payment is received by the covered individual or claimant.

History. Acts 1985, No. 796, § 3; A.S.A. 1947, § 66-6005.

23-92-206. Collection of premiums, etc. — Deposits and withdrawals.

(a) An administrator is a fiduciary in collecting or returning premiums or charges for the party with whom it has a written agreement for administrative services.

(b) Funds collected by the administrator shall be immediately remitted to the person entitled to the funds or deposited in a separately identifiable bank account which shall be established and maintained by the administrator.

(c) The administrator shall maintain records clearly showing the deposits and withdrawals from the separately identifiable bank account for each party with whom it has a written agreement for administrative services. The administrator shall furnish to the party, upon his or her request, copies of the required records.

(d) Subject to the written agreement required by § 23-92-202, withdrawals from the bank account shall be made only for the following:

(1) Remittance to a plan or trust entitled to the funds;

(2) Deposit in an account maintained in the name of the party with whom the administrator has a written agreement;

(3) Transfer to and deposit in a claims-paying account;

(4) Payment to the administrator for its commission, fees, or charges;

(5) Remittance of return premiums to the person entitled to the funds;

(6) Payment of funds for premiums of reinsurance or pursuant to the provisions of any other contract entered into by the trust or plan.

History. Acts 1985, No. 796, § 5; A.S.A. 1947, § 66-6007.

23-92-207. Books and records.

(a) Every administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in § 23-92-202 and five (5) years thereafter adequate books and records of all transactions between it, self-insured plans, trusts, and covered individuals. These books and records shall be maintained in accordance with prudent standards of insurance recordkeeping.

(b) The Insurance Commissioner shall have access to the books and records for the purpose of examination, audit, and inspection.

(c) Any trade secrets contained therein, including, but not limited to, the identity and addresses of plans and trusts, shall be confidential, except that the commissioner may use the information in any proceedings instituted against the administrator.

History. Acts 1985, No. 796, § 4; A.S.A. 1947, § 66-6006.

23-92-208. Compensation.

The compensation for an administrator may be based on:

(1) Premiums or charges collected;

(2) The number of claims paid or processed; or

(3) Some other fair and equitable basis provided by the contract.

History. Acts 1985, No. 796, § 6; A.S.A. 1947, § 66-6008.

Subchapter 3 — Arkansas Employee Leasing Act

SECTION.

23-92-301 — 23-92-316. [Repealed.]

23-92-301 — 23-92-316. [Repealed.]

Publisher's Notes. This subchapter was repealed by Act 2003, No. 1750, § 9[8]. The subchapter was derived from the following sources:

§ 23-92-301, Acts 1991, No. 1143, § 3.

§ 23-92-302, Acts 1991, No. 1143, § 3.

§ 23-92-303, Acts 1991, No. 1143, § 3.

§ 23-92-304, Acts 1991, No. 1143, § 3; 1993, No. 410, § 4.

§ 23-92-305, Acts 1991, No. 1143, § 3.

§ 23-92-306, Acts 1991, No. 1143, § 3.

§ 23-92-307, Acts 1991, No. 1143, § 3; 1997, No. 1000, § 11; 1999, No. 881, § 17.

§ 23-92-308, Acts 1991, No. 1143, § 3.

§ 23-92-309, Acts 1991, No. 1143, § 3; 1993, No. 901, § 47.

§ 23-92-310, Acts 1991, No. 1143, § 3.

§ 23-92-311, Acts 1991, No. 1143, § 3; 1999, No. 881, § 18.

§ 23-92-312, Acts 1991, No. 1143, § 3.

§ 23-92-313, Acts 1991, No. 1143, § 3.

§ 23-92-314, Acts 1991, No. 1143, § 3.

§ 23-92-315, Acts 1991, No. 1143, § 3.

§ 23-92-316, Acts 1995, No. 1308, § 1; 1999, No. 1501, § 1.

Subchapter 4 — Arkansas Professional Employer Organization Recognition and Licensing Act

SECTION.
23-92-401. Title.
23-92-402. Definitions.
23-92-403. Relationship to other laws.
23-92-404. Licensing and renewal.
23-92-405. Controlling person.
23-92-406. Changes in control.
23-92-407. Fees.
23-92-408. Financial assurance required.
23-92-409. Relationships defined.
23-92-410. Issuance, refusal, suspension, or revocation of license — Grounds and procedure.
23-92-411. Deceptive practices.
23-92-412. Penalties.
SECTION.
23-92-413. Nondisclosure of proprietary information.
23-92-414. Employer service assurance organization affidavit.
23-92-415. Licensing of employer service assurance organizations.
23-92-416. Employer service assurance organizations — Prohibited activities.
23-92-417. Employer service assurance organization — Permitted activities.
23-92-418. Filing of information.
23-92-419. Rules and regulations.

23-92-401. Title.

This subchapter may be cited as the "Arkansas Professional Employer Organization Recognition and Licensing Act".

History. Acts 2003, No. 1750, § 1.

23-92-402. Definitions.

As used in this subchapter:

(1) "Client" means any person who enters into a coemployment relationship as a coemployer with a professional employer organization;

(2) "Coemployer" means a professional employer organization or a client of a professional employer organization;

(3) "Coemployment relationship" means:

(A) As between coemployers, a relationship in which the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers under a professional employer agreement and this subchapter and which is intended to be an ongoing relationship rather than a temporary or project-specific relationship;

(B) As between each professional employer organization and a covered employee to which a professional employer agreement applies, an employment relationship in which:

(i) The professional employer organization is entitled to enforce the rights and is obligated to perform the duties and obligations allocated to the organization by the professional employer agreement and this subchapter; and

(ii) A covered employee is entitled to enforce against the professional employer organization the duties and obligations allocated to the organization by the professional employer agreement and this subchapter; and

(C) As between each client and a covered employee to which a professional employer agreement applies, an employment relationship in which each client:

(i) Is entitled to enforce the rights allocated to the client by the professional employer agreement and this subchapter;

(ii) Is obligated to provide and perform the employer obligations allocated to the client by the professional employer agreement and this subchapter; and

(iii) Is responsible for any employer right or obligation not otherwise allocated by the professional employer agreement or this subchapter;

(4) "Commissioner" means the Insurance Commissioner;

(5) "Controlling person" means:

(A) Any natural person who directly or indirectly possesses the power to direct or cause the direction of the management or policies of any professional employer organization, including:

(i) Direct or indirect control of ten percent (10%) or more of an ownership interest bearing the right to participate in policy making for the professional employer organization; or

(ii) The general power to endorse any negotiable instrument payable to or on behalf of the professional employer organization or to cause the direction of the management or policies of any professional employee organization; and

(B) Any natural person employed, appointed, or authorized by a professional employer organization to enter into a contractual relationship with a client company on behalf of the professional employer organization;

(6)(A) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client who has entered into a professional employer agreement with respect to the employee.

(B) "Covered employee" includes the client's officers, directors, shareholders, partners, and managers to the extent that those persons act as operational managers or perform services for the client;

(7) "Department" means the State Insurance Department;

(8) "Employer service assurance organization" means an organization licensed under § 23-92-415;

(9) "Licensee" means a professional employer organization licensed under this subchapter;

(10) "Person" means any individual, partnership, corporation, limited liability company, association, or any legally recognized entity, however formed;

(11) "Professional employer agreement" means a written contract by and between a client and a professional employer organization under which the professional employer organization and the client agree to establish a coemployment relationship and which satisfies the requirements of § 23-92-409(c);

(12) "Professional employer organization" means any person engaged in the business of providing professional employer services;

(13)(A) "Professional employer organization group" means two (2) or more affiliated professional employer organizations.

(B) Two (2) or more professional employer organizations are affiliated if they have common owners having ownership interests in them of greater than fifty percent (50%);

(14) "Professional employer organization service organization affidavit" means an attestation or certification of a professional employer organization service organization and any additional information that conforms to the requirements in the rules and regulations as promulgated by the commissioner;

(15)(A) "Professional employer services" means the service of entering into a coemployment relationship under this subchapter in which at least a majority of the employees providing services to a client or to a division or work unit of a client are covered employees and in which:

(i) The arrangement is intended to be, or is, ongoing rather than temporary in nature; and

(ii) Employer responsibilities, including the right of direction and control of the employees, are shared by the professional employer organization and the recipient.

(B) "Professional employer services" does not include services performed by temporary employees or by persons determined to be independent contractors with respect to the recipient;

(16)(A) "Temporary help services" means services consisting of a person:

(i) Recruiting and hiring its own employees;

(ii) Finding other organizations that need the services of those employees;

(iii) Assigning those employees to perform work at or for the other organizations to support or supplement the other organizations' workforces or to provide assistance in special work situations, such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects; and

(iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(B) "Temporary help services" shall not be deemed professional employer services; and

(17)(A) "Transacting insurance" includes any of the following actions by a professional employer organization or its representatives:

(i) Soliciting prospective clients based solely or primarily on representation of insurance cost advantages;

(ii) Advising a prospective client regarding insurance coverage; or

(iii) Offering for sale or selling a policy of insurance to a client or employee.

(B) "Transacting insurance" does not include any of the following actions by a professional employer organization or its representatives:

(i) Soliciting prospective clients to enter into professional employee agreements;

(ii) Collecting information from a prospective client related to payroll, employee benefits, employment policies, workplace safety, and other employer responsibilities and operational experience;

(iii) Evaluating collected information to ascertain the professional employer organization's risk and cost associated with serving a prospective client's workforce;

(iv) Informing a prospective client of the terms and conditions under which the professional employer organization will enter into a professional employer agreement; or

(v) Performing employer responsibilities as required by this subchapter.

History. Acts 2003, No. 1750, § 1.

23-92-403. Relationship to other laws.

(a)(1) Neither this subchapter nor any professional employer agreement shall affect, modify, or amend any collective bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the National Labor Relations Act, as it existed on January 1, 2003.

(2) This subchapter preserves all rights to which a covered employee would be entitled under a traditional employment relationship.

(b) Neither this subchapter nor any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(c) A covered employee who must be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any license, registration, or certification requirement.

(d) A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to this subchapter or to regulations promulgated under this subchapter.

(e)(1) For purposes of determination of tax credits and other economic incentives provided by Arkansas that are based on employment, covered employees are deemed employees solely of the client.

(2) A client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client.

(3) Upon request by a client, each professional employer organization shall provide employment information reasonably required by an Arkansas agency or department that is necessary to support any

request, claim, application, or other action by a client seeking any tax credit or economic incentive under subdivision (e)(2) of this section.

(f)(1) Applicants for licensing or a professional employer organization licensed under this subchapter authorize the Department of Workforce Services, the Workers' Compensation Commission, and the State Insurance Department, or their successors, to release otherwise confidential information to the other departments or commission in this subdivision (f)(1) concerning the applicant or professional employer organization upon the written request by the requesting department or commission.

(2) The Department of Workforce Services, the Workers' Compensation Commission, and the State Insurance Department shall maintain the confidentiality of information received under subdivision (f)(1) of this section unless the information is introduced into evidence at an administrative proceeding or at a civil or criminal trial arising out of a violation of this subchapter that involves the applicant, the professional employer organization, or the controlling person.

(g) Neither this subchapter nor any professional employer agreement shall affect, limit, restrict, or modify the rights or obligations of any client, professional employer organization, or covered employee with respect to:

(1) The payment of wages as required by contract or by state or federal law; and

(2) Compliance with the following:

(A) Section 11-2-101 et seq., § 11-3-101 et seq., § 11-4-101 et seq., § 11-5-101 et seq., § 11-6-101 et seq., § 11-7-201 et seq., the Department of Workforce Services Law, § 11-10-101 et seq., and § 11-12-101 et seq.;

(B) Section 20-20-301 et seq.;

(C) Section 22-9-301 et seq., commonly referred to as the "Arkansas Prevailing Wage Law";

(D) The Arkansas Civil Rights Act of 1993, § 16-123-101 et seq.;

(E) The Public Employees' Chemical Right to Know Act, § 8-7-1001 et seq.; and

(F) Section 7-1-102, concerning voting time; § 16-31-106, concerning jury duty; and § 21-4-101, concerning leave of absence for public service.

History. Acts 2003, No. 1750, § 1.

U.S. Code. The National Labor Relations Act, referred to in (a)(1), is codified as 29 U.S.C.S. § 151 et seq.

23-92-404. Licensing and renewal.

(a) Except as otherwise provided in this subchapter, no person shall provide, advertise, or otherwise hold itself out as providing professional employer services in Arkansas unless the person is licensed as a professional service organization under this subchapter.

(b)(1) Each professional employer organization required to be licensed under this subchapter shall provide the Insurance Commis-

sioner information required by the commissioner on forms prescribed by the commissioner.

(2) The information required under subdivision (b)(1) of this section shall include the following information:

(A) The legal name of the professional employer organization and all other names under which the professional employer organization conducts business;

(B) The address of the principal place of business of the professional employer organization and the address of each office it maintains in Arkansas;

(C) The professional employer organization's taxpayer or employer identification number;

(D) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five (5) years, including any fictitious names, alternative names, names of predecessors, and, if known, successor business entities;

(E) A statement of ownership that shall include the name and evidence of the business experience of all controlling persons;

(F) A statement of each controlling person disclosing any interest in any other professional employer organization, whether licensed or not in Arkansas, in which the controlling person has a ten percent (10%) or greater interest;

(G) A statement of management, which shall include the name and evidence of the business experience of any person who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

(H)(i) A financial statement setting forth the financial condition of the professional employer organization as of a date not earlier than one hundred eighty (180) days before the date the financial statement is submitted to the commissioner.

(ii) The financial statement under subdivision (b)(1)(H)(i) of this section shall be prepared in accordance with generally accepted accounting principles, and unless the professional employer organization provides financial assurance as set forth in § 23-92-408(a)(2), the financial statement shall be audited by an independent certified public accountant licensed to practice in Arkansas or the state of domicile of the professional employer organization.

(iii) A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section.

(c)(1) Each professional employer organization operating within this state as of July 16, 2003, shall complete its initial licensing no later than December 31, 2003.

(2) Each professional employer organization not operating within Arkansas as of July 16, 2003, shall complete its initial licensing before beginning operations within this state.

(d)(1) No later than the biennial anniversary date of its licensing, each licensee shall renew its licensing by notifying the commissioner of

any changes in the information provided in the licensee's most recent licensing or renewal and by paying a renewal fee.

(2) If a licensee under this subchapter fails to renew its license at the time of renewal and pay the renewal fee, its license shall become delinquent.

(3)(A) Licensees under this subchapter shall have thirty (30) days after the renewal date in which to renew their licenses and pay in addition to the renewal fee under subdivision (d)(1) of this section a late fee not to exceed one thousand dollars ($1,000).

(B) If payment is not received within the thirty-day time period under subdivision (d)(3)(A) of this section:

(i) The license shall automatically become void without further action by the commissioner; and

(ii)*(a)* The commissioner shall enter a temporary order compelling the professional employer organization to cease and desist from any professional employer services in Arkansas.

(b) The order under subdivision (d)(3)(B)(ii)(*a*) of this section shall provide for an opportunity for the professional employer organization to request a hearing.

(c) If the professional employer organization does not request a hearing within thirty (30) days after the entry of the order or if the commissioner finds after a hearing that the professional employer organization's license should not be renewed, the order entered under subdivision (d)(3)(B)(ii)(*a*) of this section shall become permanent.

(d) The commissioner shall provide a copy of the order entered under subdivision (d)(3)(B)(ii)(*a*) of this section to the Workers' Compensation Commission and the Department of Workforce Services or their successors.

(e)(1) A professional employer organization group may satisfy any reporting and financial requirements of this subchapter on a consolidated basis.

(2) As a condition of licensing as a professional employer organization group, each affiliate of the professional employer organization group shall guarantee payment of all financial obligations with respect to wages, employment taxes, and employee benefits of each affiliate of the professional employer organization group.

(f)(1) A professional employer organization is exempt from the licensing requirements contained in subsections (a)-(e) of this section and §§ 23-92-405, 23-92-406, and 23-92-408 if the professional employer organization:

(A) Submits a properly executed request for exemption on a form provided by the State Insurance Department;

(B) Is domiciled outside of Arkansas and is licensed or registered as a professional employer organization in another state that has requirements the same or greater than this subchapter;

(C) Does not maintain an office in this state or solicit in any manner clients located or domiciled within this state; and

(D) Has one hundred (100) or fewer covered employees employed or domiciled in Arkansas.

(2) A professional employer organization's exemption from the licensing requirements under this subchapter shall be valid for two (2) years, subject to renewal, for as long as the professional employer organization:

(A) Continues to qualify for the exemption; and

(B) On or before the biennial anniversary date of the original grant of exemption, requests the exemption to continue.

(g) The commissioner shall maintain a list of professional employer organizations licensed or exempted under this subchapter.

(h) The commissioner may prescribe forms necessary to promote the efficient administration of this section.

(i) The commissioner shall reject an application for a license or for an exemption from license if the commissioner finds that:

(1) Any controlling person named in the license or exemption application is not of good moral character, business integrity, or financial responsibility; or

(2) The controlling person has violated a provision of this subchapter.

(j) A person engaged in the business of providing professional employer services shall be subject to licensing under this subchapter regardless of its use of the name "professional employer organization", "PEO", "staff leasing company", "licensed staff leasing company", "employee leasing company", or any other name.

History. Acts 2003, No. 1750, § 1.

23-92-405. Controlling person.

(a) Each controlling person shall provide information and certifications necessary for the Insurance Commissioner to determine that the controlling person is of good moral character and:

(1) Is at least eighteen (18) years of age; and

(2) Has the education, managerial, or business experience to successfully act as the controlling person of a professional employer organization.

(b)(1) As used in this subchapter, "good moral character" means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the rights of others and for state and federal laws.

(2) The commissioner may conduct a thorough background investigation of the individual's good moral character, as the commissioner may deem necessary.

(c) The commissioner may prohibit a person found to qualify as a controlling person under subsection (a) of this section from exercising control over the professional employer organization if the commissioner subsequently finds that the person no longer qualifies under subsection (a) of this section.

(d) A controlling person may be removed or suspended from control for a definite period if he or she:

(1) Is indicted as the subject of a criminal investigation or is found guilty of, or pleads guilty or nolo contendere to:

(A) Bribery, fraud, or willful misrepresentation in obtaining, attempting to obtain, or renewing a license;

(B) A crime in any jurisdiction that relates to the operation of a professional employer organization business or the ability to engage in business as a professional employer organization; or

(C) Fraud, deceit, or misconduct in the:

(i) Classification of employees for purposes of determining workers' compensation rates;

(ii) Establishment or maintenance of self-insurance, whether health insurance or workers' compensation insurance; or

(iii) Operation of a professional employer organization;

(2) Is confined in any county jail, post adjudication, or confined in any state or federal prison or mental institution;

(3) Can no longer safely be entrusted to deal with the public or in a confidential capacity, due to mental disease or deterioration;

(4) Has been previously suspended and is found guilty for a second time of any misconduct that warrants suspension;

(5) Has been previously suspended and is found guilty of a course of conduct or practice that shows the licensee is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors or those with whom the licensee may sustain a confidential relationship may not safely be entrusted to the licensee;

(6) Fails to inform the commissioner in writing within thirty (30) days after being found guilty of, or entering a plea of guilty or nolo contendere to, any felony;

(7) Is determined liable for civil fraud by a court in any jurisdiction; or

(8) By bribery, misrepresentation, or fraud, obtains or attempts to obtain a new license or renews or attempts to renew a license to provide professional employer organization services.

History. Acts 2003, No. 1750, § 1.

23-92-406. Changes in control.

(a)(1) A license issued to any professional employer organization under this subchapter may not be transferred or assigned.

(2) A licensee may not operate an entity subject to licensing under this subchapter under any name or at any location other than that specified in the application for the license or without having received the prior written consent of the Insurance Commissioner.

(3) The commissioner may adopt additional rules to provide for a licensee's change of name or location.

(b)(1) A person or entity that seeks to purchase or acquire control of an entity licensed under this subchapter shall first apply to the commissioner for a certificate of approval for the proposed change of ownership unless the licensed entity to be acquired is a publicly traded

entity, in which event the acquiring entity shall apply to the commissioner for a certificate of approval for the proposed change of ownership at the time the licensed entity publishes public notice of the intended purchase or acquisition of control.

(2) The application under subdivision (b)(1) of this section shall contain the name and address of the proposed new owner, controlling person, and any other information required by the commissioner.

(c)(1) Any existing stockholder or partner who intends to acquire control of an existing entity that is licensed under this subchapter shall first apply to the commissioner for a certificate of approval for the proposed change of ownership.

(2) The application shall contain the name and address of any stockholder or partner who owns ten percent (10%) or more of the entity and who seeks to acquire control, and any other information required by the commissioner.

(d)(1) Before recommending that a certificate of approval be issued to an applicant that has applied under subsection (a) or subsection (b) of this section, the commissioner may conduct an investigation of the applicant and examine the records of the entity as part of the investigation in accordance with applicable law.

(2) As a part of his or her investigation, the commissioner shall determine if there are any complaints pending against the company being purchased, the controlling person proposed to operate the purchased entity, or the proposed controlling person's existing company.

(3) The commissioner shall issue a certificate of approval only after he or she has determined that the proposed new owner possesses the financial ability, experience, and integrity to operate the entity as required by this subchapter.

(e) The commissioner shall waive the requirements of subsection (d) of this section and shall automatically approve the proposed change in ownership if:

(1) The application meets the requirements of subsection (b) or subsection (c) of this section;

(2) The proposed new owner and the current owner are part of the same controlled entity; and

(3) No member or controlling person of the controlled entity is under investigation or has been previously denied a license by the commissioner.

(f) Any application that is submitted to the commissioner under this section shall be deemed approved if the commissioner has not approved or rejected the application and provided the applicant with the basis for a rejection within ninety (90) days after the receipt of the completed application.

History. Acts 2003, No. 1750, § 1.

23-92-407. Fees.

(a) Upon filing an initial licensing statement under this subchapter, a professional employer organization shall pay an initial licensing fee of one thousand dollars ($1,000).

(b) Upon each biennial renewal of a licensing statement filed under this subchapter, a professional employer organization shall pay a renewal fee of one thousand dollars ($1,000).

(c) Each professional employer organization exempt from licensing under the terms of this subchapter shall pay an exemption fee in the amount of fifty dollars ($50.00) upon initial application for exemption and upon each biennial renewal of the exemption.

(d) Upon the filing of each request for a change in ownership or controlling person filed under this subchapter, a professional employer organization shall pay a change-in-ownership fee of five hundred dollars ($500).

(e) By regulation, the Insurance Commissioner may increase, decrease, or eliminate any fee provided for in this section, but no fee provided for in this section shall ever exceed five thousand dollars ($5,000).

History. Acts 2003, No. 1750, § 1.

23-92-408. Financial assurance required.

(a) Each professional employer organization shall maintain:

(1) An audited minimum net worth of at least one hundred thousand dollars ($100,000), as reflected in the financial statements submitted to the Insurance Commissioner with the initial licensing, and annually thereafter; or

(2)(A) A bond in the amount of at least one hundred thousand dollars ($100,000).

(B) The terms and conditions of the bond shall be approved by the commissioner.

(C) The bond shall be conditioned so that the licensee and each member, employee, shareholder, or officer of a person, firm, partnership, corporation, or association operating as an agent of the licensee shall not:

(i) Violate the provisions of this subchapter or violate rules, regulations, or orders lawfully promulgated by the commissioner under this subchapter; or

(ii) Fail to pay any wages due under any contract made by the licensee in the conduct of its business subject to this subchapter.

(D) The bond required by this section shall be a surety bond issued by a corporate surety or insurer authorized to do business in Arkansas.

(E) In lieu of a bond, the professional employer organization may deposit either:

(i) Securities with a minimum market value of at least one hundred thousand dollars ($100,000) with an approved depository under an approved depository agreement under § 23-69-134(b)(4); or

(ii) An irrevocable letter of credit in a face amount of not less than one hundred thousand dollars ($100,000) in a form that is acceptable to the commissioner.

(F) The bond, deposited securities, or letter of credit shall secure payment by the professional employer organization of all taxes, wages, benefits, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payments when due.

(G) Any securities deposited under this subsection may be included for the purpose of calculation of the minimum net worth required by this subsection.

(b)(1) Within forty-five (45) days after the end of each calendar quarter, a professional employer organization shall submit to the commissioner a statement by an independent certified public accountant that all applicable state payroll taxes for covered employees located in this state have been paid on a timely basis for that quarter.

(2) The statement shall be either in the form of an examination level attestation or shall be based upon agreed-upon procedures acceptable to the commissioner.

(3) The commissioner shall issue by rule requirements for procedures referred to in subdivision (b)(2) of this section.

(c)(1) If any person is aggrieved by the misconduct of any licensee, that person may maintain an action in his or her own name upon the bond or assets of the professional employer organization in any court of competent jurisdiction in this state.

(2) All claims shall be assignable, and the assignee shall be entitled to the same remedies upon the bond of the licensee as the aggrieved person would have been entitled if the claim had not been assigned.

(3) Any assignable claim under subdivision (c)(2) of this section may be enforced in the name of the assignee.

(4) Any remedy provided by this section is in addition to any other remedy which otherwise exists.

(d) An action on the bond or other security required by this section may be maintained by the commissioner in the name of the State of Arkansas in any court of competent jurisdiction in this state for the benefit of any person or persons aggrieved by the misconduct of the licensee.

(e)(1) If any licensee fails to file a new bond with the commissioner within thirty (30) days after notice of cancellation by the surety of the bond required by this section, the license issued to the licensee or the principal under the bond shall be deemed suspended until a new surety bond is filed with and approved by the commissioner.

(2) A person whose license is suspended under this section shall not carry on the business of a professional employer organization during the period of the suspension.

History. Acts 2003, No. 1750, § 1.

23-92-409. Relationships defined.

(a)(1) Except as specifically provided in this subchapter, the coemployment relationship between the client and the professional employer organization and between each coemployer and each covered employee shall be governed by the professional employer agreement.

(2) Neither this subchapter nor any professional employer agreement shall:

(A) Diminish, abolish, or remove rights of covered employees as to clients or obligations of clients as to a covered employee that existed before the effective date of a professional employer agreement;

(B) Terminate an employment relationship existing before the effective date of a professional employer agreement; or

(C) Create any new or additional enforcement right of a covered employee against a professional employer organization not specifically allocated to the professional employer organization in the professional employer agreement or under this subchapter.

(b) Except as specifically provided in this subchapter or in the professional employer agreement, in each coemployment relationship:

(1) The client is entitled to exercise all rights and is obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship; and

(2)(A) The professional employer organization shall be entitled to exercise only the rights and obligated to perform only the duties and responsibilities specifically required by this subchapter or by the professional employer agreement.

(B) The rights, duties, and obligations of the professional employer organization as coemployer with respect to any covered employee is limited to those rights during and obligations arising under the professional employer agreement and this subchapter during the term of coemployment by the professional employer organization of the covered employee.

(c) Each professional employer agreement shall include, at a minimum, the following:

(1)(A) The professional employer organization shall reserve a right of direction and control over the covered employees.

(B) However, the client may retain the right to exercise direction and control over covered employees as is necessary to:

(i) Conduct the client's business;

(ii) Discharge any fiduciary responsibility that it may have; or

(iii) Comply with any applicable licensing requirements;

(2) The professional employer organization shall:

(A) Pay wages and salaries to covered employees;

(B) Withhold, collect, report, and remit payroll-related and employment taxes; and

(C) To the extent the professional employer organization has assumed responsibility in the professional employer agreement, make payments for employee benefits for covered employees;

(3) The professional employer organization shall retain the authority to hire, terminate, and discipline the covered employees unless otherwise agreed; and

(4)(A) The responsibility to obtain workers' compensation coverage for covered employees from a carrier licensed to do business in Arkansas and otherwise in compliance with all applicable requirements shall be specifically allocated to either the client or the professional employer organization.

(B)(i) If the responsibility under subdivision (c)(4)(A) of this section is allocated to the professional employer organization under a professional employer agreement, the professional employer agreement shall require the professional employer organization to maintain records regarding the premium and loss experience related to workers' compensation insurance provided to covered employees under the professional employer agreement.

(ii) The professional employer agreement shall also provide that, if requested by the client at or after the termination of the professional employer agreement, the professional employer organization shall provide the records maintained under subdivision (c)(4)(B)(i) of this section to the client.

(C) If the professional employer organization or any of its controlling persons cannot provide the information requested under subdivision (c)(4)(B)(ii) of this section, any insurance carrier that provided the coverage for the covered employees shall provide it upon request of the client or the Insurance Commissioner.

(5)(A) Upon request, during the period the client is a party to a professional employer organization arrangement and for a period of ninety (90) days after termination of a professional employer organization arrangement, a client or former client is entitled to receive records of the professional employer organization regarding payroll, workers' compensation coverage, losses and claims, and employee benefits provided under the professional employer organization arrangement.

(B)(i) The professional employer organization may charge a reasonable fee for the cost of reproducing the information under subdivision (c)(5)(A) of this section.

(ii) This section does not require the disclosure of information to a client or former client concerning another client or former client of the professional employer organization.

(C) Either the professional employer organization or the controlling person, to the extent the controlling person has access to the information, shall furnish the information requested within thirty (30) days of receiving the request.

(d) With respect to each professional employer agreement entered into by a professional employer organization, each professional employer organization shall provide written notice to each covered employee affected by the professional employer agreement of the general nature of the coemployment relationship between and among the

professional employer organization, the client, and any covered employee.

(e)(1) A professional employer organization shall provide to a client within fifteen (15) days of receipt of a written request a record of wages by workers' compensation class code and claims loss runs for the lesser of the prior thirty-six (36) calendar months or the period of time the professional employer agreement between the client and professional employer organization has been effective.

(2) If a professional employer organization fails to provide the information in subdivision (e)(1) of this section and if the commissioner requests no later than ninety (90) days after the termination of the policy covering the client, the insurer providing the coverage shall provide to the client within thirty (30) days the information or as much information as the insurer possesses or should possess if the insurer has complied with applicable law.

(f)(1) Either a client or a professional employer organization may sponsor retirement and welfare benefit plans for its covered employees.

(2) If limited to the employees of the professional employer organization, a welfare benefit plan offered to the covered employees of a single professional employer organization shall not be considered a multiple employer welfare arrangement or trust within the meaning of applicable law.

(3) For purposes of § 23-86-201 et seq., with respect to a health benefit plan sponsored by a professional employer organization:

(A) A professional employer organization shall be considered the employer of all of its covered employees; and

(B) All covered employees of one (1) or more clients participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization.

(4) If a professional employer organization offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer, the plan shall:

(A) Utilize a third-party administrator licensed to do business in this state;

(B) Hold all plan assets, including participant contributions, in a trust account; and

(C) Provide sound reserves for the plan as determined using generally accepted actuarial standards.

(g) Except to the extent otherwise provided in a professional employer agreement:

(1) A professional employer organization shall not be liable for the acts, errors, or omissions of a client or of any covered employee when the covered employee is acting under the direction and control of a client;

(2) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when the covered

employee is acting under the direction and control of the professional employer organization;

(3) This subsection does not limit any contractual liability or obligation specifically provided in a professional employer agreement or the liabilities and obligations of any professional employer organization or client as defined elsewhere in this subchapter; and

(4) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability, insurance, fidelity bonds, surety bonds, or employer's liability not covered by workers' compensation carried by the professional employer organization unless the covered employees are included by specific reference in the professional employer agreement and applicable pre-arranged employment contract, insurance contract, or bond.

(h) Except as provided under § 23-92-411, the sale of professional employer services provided by professional employer organizations licensed under this subchapter shall not constitute the sale of insurance for purposes of Arkansas insurance law.

(i) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee.

(j) A licensed professional employer organization shall be deemed an employer of the covered employees and shall perform the following employer responsibilities in conformity with all applicable federal and state laws and regulations to:

(1) Pay wages and collect, report, and pay employment taxes from its own accounts;

(2) Pay unemployment taxes as required by the Department of Workforce Services Law, § 11-10-101 et seq.;

(3)(A) Ensure that all covered employees are covered by workers' compensation insurance provided in conformance with the laws of this state.

(B) Workers' compensation coverage may be provided through a policy or plan maintained by either the professional employer organization or the client.

(C) However, for purposes of risks insured under the Arkansas Workers' Compensation Insurance Plan, § 23-67-301 et seq., the commissioner is authorized to promulgate rules and regulations as he or she deems necessary to assure that workers' compensation coverage is available to employees providing services for a client;

(4) Be entitled and to entitle the client, together as joint employers, to the exclusive remedy under § 11-9-105, under both the workers' compensation and employer's liability provisions of a workers' compensation policy or plan that either party has secured within the meaning of § 11-9-105; and

(5)(A) Not be vicariously liable for the liabilities of the client, whether contractual or otherwise.

(B) However, the client shall not be vicariously liable for the liabilities of the professional employer organization, whether contractual or otherwise.

(C) This section shall limit any direct contractual liability or any joint liability between the client and the professional employer organization.

History. Acts 2003, No. 1750, § 1.

CASE NOTES

Requirements.

In a workers' compensation matter, an agreement signed by the employee providing coverage through the Ohio state-administered fund did not satisfy the requirement of subdivision (c)(4)(A) of this section and was therefore void as in violation of the Arkansas Insurance Code; the co-employers were responsible for filing a plan allocating the responsibility for obtaining workers' compensation coverage from a carrier licensed to do business in Arkansas. Williams v. Johnson Custom Homes, 374 Ark. 457, 288 S.W.3d 607 (2008).

23-92-410. Issuance, refusal, suspension, or revocation of license — Grounds and procedure.

(a) The Insurance Commissioner shall issue a license as a professional employer organization to any person who qualifies for the license under the terms of this subchapter.

(b) In addition, the commissioner may refuse to issue a license to any person, may suspend or revoke the license of any professional employer organization, or impose administrative fines as provided for in this subchapter when the commissioner finds:

(1) That the licensee or applicant has violated any of the provisions of this subchapter, the rules and regulations or other orders lawfully promulgated by the commissioner, or the conditions of financial assurances required by this subchapter;

(2) That the licensee or applicant has engaged in a fraudulent, deceptive, or dishonest practice; or

(3) For good and sufficient cause, that the licensee or applicant is unfit to be a professional employer organization within the meaning of this subchapter or of any of the rules and regulations or orders lawfully promulgated by the commissioner.

(c) The commissioner may not refuse to issue a license or suspend or revoke a license unless he or she furnishes the professional employer organization with a written statement of the charges against it and affords it an opportunity to be heard on the charges.

History. Acts 2003, No. 1750, § 1.

23-92-411. Deceptive practices.

(a) No professional employer organization shall:

(1) Evade or attempt to evade the provisions of this subchapter by purporting to be the sole employer of the covered employees;

(2) Present a proposal to enter into a professional employer agreement with a prospective client unless the following notice is printed in not less than 12-point bold type on the first page of the proposal:

"This proposal is intended to provide information about the general terms and conditions under which the above named firm will enter into an agreement to provide professional employer services. Information contained in this proposal does not constitute advice on legal, tax, or insurance matters. For advice on these matters, you should consult with the appropriate licensed professional.";

(3) Enter into a professional employer agreement without a written provision signed by the client stating that the client is responsible for ensuring with the assistance of a licensed insurance producer that any subcontractor of the client has workers' compensation coverage as required by law;

(4) Transact insurance, as defined under § 23-60-102, except through a licensed resident or nonresident insurance producer;

(5) Use the name or title "licensed employee leasing company", "employee leasing company", "employee leasing company group", "professional employer", "professional employer organization", "PEO", "controlling person", or words that would tend to lead one to believe that the person or entity is licensed under this subchapter when the person or entity has not been licensed under this subchapter;

(6) Attempt to use a license that has lapsed or has been suspended or revoked;

(7) Fail to maintain workers' compensation insurance as required by this subchapter;

(8) Conduct business without an active license;

(9) Transfer or attempt to transfer a license issued under this subchapter;

(10) Violate or fail to conform to any provision of this subchapter or any lawful order or rule issued under this subchapter;

(11) Fail to notify the Insurance Commissioner in writing of any change of the primary business address or the addresses of any of the licensee's offices in the state;

(12) Have an adverse material final action taken by any state or federal regulatory agency for violations within the scope or control of the licensee;

(13) Fail to inform the commissioner in writing within thirty (30) days after any adverse material final action by a state or federal regulatory agency;

(14) Fail to meet or maintain the requirements for licensure as a professional employer organization; or

(15) Attempt to obtain or renew a license to provide professional employment services by bribery, misrepresentation, or fraud.

(b) The commissioner may prescribe by regulation additional acts or omissions that shall be deemed to constitute deceptive practices under this subchapter.

History. Acts 2003, No. 1750, § 1.

23-92-412. Penalties.

(a) Any person who engages in the business of a professional employer organization or acts as a professional employer organization without first procuring a license or who otherwise violates any of the provisions under this subchapter shall be liable for a civil penalty of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000) for each day that it engages in the business of providing professional employer services without a license.

(b)(1) Any person who violates any of the provisions under this subchapter or who violates any rules or regulations promulgated by the Insurance Commissioner under this subchapter shall be liable for a civil penalty for each offense of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000) for each violation.

(2) For any violation affecting two (2) or more employees covered by a professional employer organization agreement, the fine shall be multiplied by the number of employees affected by the violation.

(c) The commissioner shall have the statutory power to enjoin or restrain by bringing an action in the Pulaski County Circuit Court against any person who engages in the business of or acts as a professional employer organization without having first procured a license for engaging in the business of a professional employer organization or acting as a professional employer organization.

History. Acts 2003, No. 1750, § 1.

23-92-413. Nondisclosure of proprietary information.

(a)(1) Professional employer organizations and professional employer organization groups are required under this subchapter to file with the Insurance Commissioner certain proprietary material, including financial records and financial information and client lists, the disclosure of which would give advantage to competitors.

(2)(A) The commissioner shall not consider proprietary material under this subchapter to be subject to mandatory disclosure under § 25-19-105(b)(9)(A).

(B) If litigation or any other proceedings are instituted to compel disclosure, the total expense of the proceedings shall be paid by the professional employer organization or professional employer organization group whose proprietary material is being sought.

(C) The commissioner shall give notice in writing to any professional employer organization or professional employer organization group whose client lists or other material that the commissioner

deems to be proprietary are being sought under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Notwithstanding subsection (a) of this section or any other law governing disclosure of confidential information, the commissioner, the Director of the Department of Workforce Services, and the Workers' Compensation Commission may exchange information among themselves for the purposes of regulating professional employer organizations.

History. Acts 2003, No. 1750, § 1.

23-92-414. Employer service assurance organization affidavit.

(a) The Insurance Commissioner may provide by rule and regulation for the acceptance of an employer service assurance organization affidavit provided on behalf of a professional employer organization in lieu of the requirements under §§ 23-92-404 — 23-92-406 and 23-92-408 and the fees provided for in § 23-92-407.

(b) The fee for filing an employer service assurance organization affidavit shall be five hundred dollars ($500) for initial licensure and five hundred dollars ($500) for each biennial renewal.

History. Acts 2003, No. 1750, § 1.

23-92-415. Licensing of employer service assurance organizations.

(a)(1) No employer service assurance organization shall provide any service relating to the regulation of professional employer organizations, and no state agency, professional employer organization, or insurer shall utilize the services of the organization for those purposes unless the organization has obtained a license from the Insurance Commissioner.

(2) No state agency, professional employer organization, or insurer shall use the services of an employer service assurance organization unless the organization has obtained a license from the commissioner.

(b) No employer service assurance organization shall refuse to supply any services for which it is licensed in Arkansas to any state agency, professional employer organization, or insurer authorized to do business in Arkansas and offering to pay the fair and usual compensation for the services.

(c)(1) An employer service assurance organization applying for a license shall include with its application:

(A) A copy of its:

(i) Constitution, charter, or articles of organization, agreement, association, or incorporation; and

(ii) Bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(B) A list of its members and subscribers;

(C) The name and address of one (1) or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served;

(D) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;

(E)(i) Financial assurance acceptable to the commissioner, including:

(a)(1) A surety bond issued by a corporate surety in favor of a trust, maintained at a national bank with the bank serving as trustee, in an amount of not less than one million dollars ($1,000,000) or an equivalent amount of cash or other security acceptable to the commissioner on behalf of each professional employer organization for which the employer service assurance organization provides an affidavit under § 23-92-414.

(2) The security under subdivision (c)(1)(E)(i)(*a*)(*1*) of this section shall be held by the trust to compensate for payment of claims made by clients, employees, insurers, or taxing authorities in accordance with the employer service assurance organization's policies and procedures, as approved by the commissioner, and if the professional employer organization fails to pay wages, taxes, insurance premiums, and contributions to employee retirement plans as promised in its professional employer organization service arrangement or as required by law; and

(b) A surety bond issued by a corporate surety in favor of the State of Arkansas in the amount of not less than one hundred thousand dollars ($100,000), the terms and conditions of which shall be approved by the commissioner.

(ii) The one hundred thousand dollar ($100,000) surety bond shall be conditioned so that any professional employer organization for which the employer service assurance organization provides an affidavit under § 23-92-414 and each member, employee, shareholder, or officer or a person, firm, partnership, corporation, or association operating as an agent of the professional employer organization will not violate rules, regulations, or orders lawfully promulgated by the commissioner under this subchapter or fail to pay any wages due under any contract made by the professional employer organization in the conduct of its business under this subchapter;

(F) License fees as provided by § 23-61-401 for rate service organizations; and

(G) Any other relevant information and documents that the commissioner may require.

(2)(A) Every organization that has applied for a license shall notify the commissioner of every material change in facts or in the documents on which its application was based.

(B) Any amendment to a document filed under this section shall become effective thirty (30) days after it is filed.

(3)(A) If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and

technically qualified to provide the services proposed and that all requirements of the law are met, he or she shall issue a license specifying the authorized activity of the applicant.

(B) The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to lessen substantially the competition in any market.

(4) Licenses issued under this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked if an employer service assurance organization under § 23-92-416 continues the license each calendar year, upon the following activity by the licensee:

(A) Payment on or before January 1 of a continuation fee as provided in § 23-61-401 for rate service organizations;

(B) Filing of a letter requesting continuation of its license for the following calendar year; and

(C) Submission of information that may be required by the commissioner.

History. Acts 2003, No. 1750, § 1.

23-92-416. Employer service assurance organizations — Prohibited activities.

(a) No employer service assurance organization shall attempt to monopolize or to combine or conspire with any other person to monopolize any market or make any arrangement with any professional employer organization, employer service assurance organization, or other person that has the purpose or effect of unreasonably restraining trade or of substantially lessening competition in the business of professional employer organization services or insurance.

(b) An employer service assurance organization may not have or adopt any rule, exact any agreement, or formulate or engage in any program that would require any member or subscriber to:

(1) Interfere with the right of any professional employer organization to conduct business in the state as permitted by law and independent of that service organization;

(2) Utilize some or all of its services as provided by the service organization's policies and procedures as approved by the Insurance Commissioner;

(3) Adhere to its standards, procedures, or membership requirements except on a voluntary basis; or

(4) Prevent any professional employer organization from acting independently.

History. Acts 2003, No. 1750, § 1.

23-92-417. Employer service assurance organization — Permitted activities.

In addition to other activities permitted, any employer service assurance organization may:

(1) Provide services under § 23-92-414 and § 23-92-419(b);

(2) Develop and administer standards, procedures, and programs of accreditation and financial assurance and other services for professional employer organizations and state agencies unless otherwise prohibited by law; and

(3) Furnish any other services not prohibited by this subchapter.

History. Acts 2003, No. 1750, § 1.

23-92-418. Filing of information.

(a) Each employer service assurance organization shall file with the Insurance Commissioner each affidavit and related document and information under § 23-92-414 or § 23-92-419(b) on or before the date the affidavit or related document and information are otherwise due, as prescribed by the commissioner.

(b) The commissioner may extend the filing deadline by prior written notice to the filer.

History. Acts 2003, No. 1750, § 1.

23-92-419. Rules and regulations.

(a)(1) The Insurance Commissioner may prescribe rules and regulations for the conduct of the business of professional employer organizations needed to implement this subchapter.

(2) The commissioner shall adopt rules and regulations under this subchapter in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b)(1) The commissioner may adopt reasonable rules for use by employer service assurance organizations to record and report to the commissioner information determined by the commissioner to be necessary or appropriate for the administration of this subchapter and for the effectuation of its purposes.

(2) The commissioner may designate one (1) or more employer service assurance organizations to assist him or her in gathering, compiling, and reporting the information.

History. Acts 2003, No. 1750, § 1.

CHAPTER 93
CONTINUING CARE PROVIDERS

SUBCHAPTER.
1. Continuing Care Provider Regulation Act.
2. Licensing.

Effective Dates. Acts 1987, No. 329, § 17: Mar. 19, 1987. Emergency clause provided: "It is hereby found that the possibility of new Providers commencing business in this State in the absence of any regulation of Continuing Care Facilities poses an economic threat to the citizens of this State, and it is, therefore, declared that an emergency exists, and this Act being necessary to protect the citizens of this State who are contemplating entering into Continuing Care contracts, shall take effect and be in force from and after its passage and approval."

Acts 1989, No. 203, § 7: Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that current laws of this State as to Continuing Care Providers fail to require such facilities to file audited financial statements with the Arkansas Insurance Department. It is hereby determined that current laws fail to require that provider investments be held in the provider's name and within the State of Arkansas. It is determined that Arkansas law does not currently authorize the Insurance Commissioner to conduct a full financial examination of Continuing Care Providers until after a provider is determined to be insolvent or upon written complaint of a current or prospective resident of the facility. It is hereby determined that existing Arkansas laws as to Continuing Care Providers are inadequate to assure solvency of facilities holding funds of the citizens of this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: July 1, 1991, except § 22, effective Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Subchapter 1 — Continuing Care Provider Regulation Act

SECTION.
23-93-101. Title.
23-93-102. Legislative intent — Applicability.
23-93-103. Definitions.
23-93-104. Violations.
23-93-105. Rules and regulations.
23-93-106. Disclosure statement — Contents.
23-93-107. Disclosure statement — Review.
23-93-108. Continuing care contracts — Minimum requirements.
23-93-109. Right to rescind contracts.
23-93-110. Untrue, deceptive, or misleading statements prohibited.
23-93-111. Liquid refund reserve requirement.
23-93-112. Escrow account required.
23-93-113. Statutory lien.
23-93-114. Investigations and examinations.

A.C.R.C. Notes. The enactment of Acts 1993, No. 787, resulted in the division of the chapter into subchapters. Chapter Code sections existing prior to the enactment of Acts 1993, No. 787, have been assigned to Subchapter 1. Code sections derived from Acts 1993, No. 787, have been assigned to Subchapter 2.

23-93-101. Title.

This subchapter shall be known and may be cited as the "Continuing Care Provider Regulation Act".

History. Acts 1987, No. 329, § 1.

23-93-102. Legislative intent — Applicability.

(a) The General Assembly recognizes that continuing care communities have become an important and necessary alternative for the long-term residential, social, and health maintenance needs for many of the state's elderly citizens.

(b) The General Assembly recognizes the need for full disclosure of important facts to an appropriate regulatory agency of the state. Accordingly, the General Assembly has determined that continuing care facilities should be regulated in accordance with the provisions of this subchapter.

(c)(1) The provisions of this subchapter apply equally to for-profit and not-for-profit provider organizations.

(2) The provisions of this subchapter shall be the minimum requirements to be imposed upon any person, association, or organization offering or providing continuing care as set forth in this subchapter.

(3) This subchapter shall not apply to facilities duly authorized and licensed by the State of Arkansas as long-term care facilities providing nursing care.

History. Acts 1987, No. 329, § 2.

23-93-103. Definitions.

As used in this subchapter:

(1) "Commissioner" means the Insurance Commissioner;

(2)(A) "Continuing care" means the furnishing of independent living units to individuals and:

(i) Furnishing nursing care or personal care services under an agreement, whether the nursing care or personal care services are provided in the facility or in another setting designated by the agreement for providing continuing care to individuals; and

(ii)*(a)* Requiring the payment of an entrance fee by an individual not related by consanguinity or affinity to the provider furnishing the living unit.

(b) Payment may be made by an entrance fee alone, an entrance fee and periodic payments, or by payment of less fees for service.

(B) Agreements to provide continuing care shall include agreements to provide care for any duration, including agreements that are terminable by either party;

(3) "Department" means the State Insurance Department;

(4) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility which exceeds six (6) months' rental of the living unit. An accommodation fee, admission fee, or other fee of similar form and application shall be considered to be an entrance fee;

(5) "Facility" means a place which provides continuing care;

(6) "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one (1) or more identified individuals;

(7)(A) "Nursing care" means those services pertaining to the curative, restorative, and preventive aspects of nursing services that are performed by or under the supervision of a registered or licensed nurse.

(B) "Nursing care" does not include general health service such as nutritional counseling, exercise programs, or other preventive medicine techniques;

(8)(A) "Personal care services" means assistance with meals, dressing, movement, bathing, or other personal needs of maintenance or other direct supervision and oversight of the physical and mental well-being of a person.

(B) "Personal care services" does not include general health services such as nutritional counseling, exercise programs, or other preventive medicine techniques;

(9) "Provider" means the owner or operator, whether a natural person, partnership, or other incorporated association, trust, or corporation whose owner or operator undertakes to provide continuing care for a fee, whether fixed or variable, for the period of care. The fee may be payable in lump sum, in lump sum and monthly maintenance charges, or in installments;

(10) "Refund reserve" means the actuarially determined annual refund amount required to be maintained by a continuing care provider for service of its refund amounts during the next fiscal year of the facility;

(11) "Resident" means an individual entitled to receive continuing care in a facility; and

(12) "Solicit" means all actions of a provider in seeking to have individuals residing in this state pay an application fee and enter into a continuing care agreement by any means, such as, but not limited to, personal, telephone, or mail communication or any other communication directed to and received by any individual in this state and any advertisements in any media distributed or communicated by any means to individuals in this state.

History. Acts 1987, No. 329, § 3; 1991, No. 1123, § 16; 2001, No. 1553, § 53; 2009, No. 726, § 47.

A.C.R.C. Notes. The amendment of this section by Acts 2009, No. 726, § 47, substituted "payment of less fees for service" for "payment of fees for services" at the end of (2)(A)(ii)*(b)* without marking up the language to indicate the changes.

Amendments. The 2009 amendment substituted "and" for "or" at the end of (2)(A)(i), subdivided (2)(A)(ii), and made related and minor stylistic changes.

23-93-104. Violations.

(a) Whenever it appears to the Insurance Commissioner that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this subchapter or any rule or order under this subchapter, the commissioner may:

(1) Issue an order directed at that person requiring that person to cease and desist from engaging in the act or practice;

(2) Bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this subchapter or any of its rules or orders;

(3) Issue an order directed at that person to cease and desist from engaging in the act or practice and bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this subchapter or any of its rules and orders; or

(4) Issue an order assessing a monetary penalty of not more than one thousand dollars ($1,000) for each violation against that person.

(b) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

History. Acts 1987, No. 329, § 12; 1989, No. 203, § 1.

23-93-105. Rules and regulations.

The Insurance Commissioner shall have the authority to adopt, amend, or repeal such rules and regulations as are reasonably necessary for the enforcement of the provisions of this subchapter.

History. Acts 1987, No. 329, § 13.

23-93-106. Disclosure statement — Contents.

(a) No later than sixty (60) days prior to the first solicitation of a contract to provide continuing care, the provider shall deliver an initial disclosure statement to the State Insurance Department. This statement shall contain all of the following information:

(1) The name and business address of the provider and a statement as to whether the provider is a partnership, corporation, or other type of legal entity;

(2) The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent (10%) or greater equity or beneficial interest in or of the

provider, and a description of that person's interest in or occupation with the provider;

(3) A statement as to whether the provider or any of its officers, directors, trustees, partners, managers, or affiliates, within ten (10) years prior to the date of application:

(A) Was convicted of a felony, a crime that if committed in Arkansas would be a felony, or any crime having to do with the provision of continuing care or providing of licensed nursing home care;

(B) Has been held liable or enjoined in a civil action by final judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(C) Had a prior discharge in bankruptcy or was found insolvent in any court action; or

(D) Had any state or federal licenses or permits suspended or revoked or had any state, federal, or industry self-regulatory agency commence an action against him or her and the result of the action;

(4) A statement as to:

(A) Whether the provider is or ever has been affiliated with a religious, charitable, or other nonprofit organization;

(B) The nature of the affiliation, if any;

(C) The extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider; and

(D) The provision of the Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

(5) The location and description of the physical property or properties of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates whether or not construction has begun, and the contingencies subject to which construction may be deferred;

(6) The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge;

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on the adjustments, if any;

(8) A balance sheet of the provider, audited by a certified public accountant, and certifed to by the provider, as of the end of the two (2) most recent fiscal years;

(9) A calculation of the actuarially required refund reserve showing the alternative bases upon which the calculation is made; and

(10) A copy of the standard form or forms of contract used by the provider which contain the minimum requirements of this subchapter for continuing care contracts to be attached as an exhibit to each disclosure statement.

(b) The provider shall file with the department annually, within four (4) months following the end of the provider's fiscal year, an annual disclosure statement. This statement shall contain the information required by this subchapter for the initial disclosure statement, in addition to a financial statement as of the end of the provider's fiscal year, audited and certified by a certified public accountant.

History. Acts 1987, No. 329, § 4; 1989, No. 203, § 2.

23-93-107. Disclosure statement — Review.

(a) The State Insurance Department shall review the filed disclosure document for the following:

(1) The completeness of the filing; and

(2) The manner and method of computing the reserve.

(b) The Insurance Commissioner shall notify a provider of any deficiency in the filing within sixty (60) days from the date of filing. If the provider is notified of deficiencies in the filing, reasonable time shall be allowed to the provider to correct the deficiencies.

(c) No provider may offer continuing care contracts to the public during the initial sixty-day filing period or during the period allowed to correct deficiencies noted by the commissioner.

(d) All disclosure statements shall be made available at the facility and the office of the commissioner for inspection by the citizens of this state upon request. Each resident of a facility shall be informed of the availability of the statement annually.

(e) Each disclosure statement shall clearly state that:

(1) A prospective or present resident shall rely solely upon the provider for the accuracy and completeness of the information contained in the disclosure statement; and

(2) No independent investigation of the accuracy of the information has been conducted by the commissioner.

History. Acts 1987, No. 329, § 4.

23-93-108. Continuing care contracts — Minimum requirements.

(a) A continuing care contract shall be written in clear and understandable language.

(b) A continuing care contract shall, at a minimum:

(1) Describe the facility's admission policies, including age, health status, and minimum financial requirements, if any;

(2) Describe the health and financial conditions required for a person to continue to be a resident;

(3) Describe the circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

(4)(A) List the total consideration paid, including donations, entrance fee, subscription fees, periodic fees, and other fees paid or payable.

(B) However, a provider cannot require a resident to transfer all his or her assets to the provider or community as a condition for providing continuing care, and the provider shall reserve his or her rights to charge periodic fees;

(5) Describe in detail all items of service to be received by the resident such as food, shelter, medical care, nursing care, personal care services, and other health services and the time period during which such services will be provided;

(6) Provide, as an addendum to the contract, a description of items of service, if any, which are available to the resident but which are not covered in the entrance or monthly fee;

(7) Specify taxes and utilities, if any, that the resident must pay;

(8) Specify that deposits or entrance fees paid by or for a resident shall be held in trust in a cash escrow pursuant to this subchapter;

(9) State the terms under which a continuing care contract may be cancelled by the resident or the provider and the basis for establishing the amount of refund of the entrance fee, if any;

(10) State the terms under which a continuing care contract is cancelled by the death of the resident and the basis for establishing the amount of refund, if any, of the entrance fee;

(11) State when fees will be subject to periodic increases and what the policy for increases will be;

(12) State the entrance fee and periodic fees that will be charged if the resident marries while living in the facility, the terms concerning the entry of a spouse to the facility, and the consequences if the spouse does not meet the requirements for entry;

(13) State the rules and regulations of the provider then in effect and state the circumstances under which the provider claims to be entitled to have access to the resident's unit;

(14) List the resident's and provider's respective rights and obligations as to any real or personal property of the resident transferred to or placed in the custody of the provider;

(15) Describe the living quarters purchased by or assigned to the resident;

(16) Provide under what conditions, if any, the resident may assign the use of a unit to another;

(17) Include the policy and procedure with regard to changes in accommodations due to an increase or decrease in the number of persons occupying an individual unit;

(18) State the conditions upon which the facility may sublet or relet a resident's unit;

(19) State what fee adjustments, if any, will be made in the event of voluntary absence from the facility for an extended period of time by the resident;

(20) Include the procedures to be followed when the provider temporarily or permanently changes the resident's accommodations, either within the facility or by transfer to a health facility;

(21) If the facility includes a nursing facility, describe the admissions policies and what will occur if a nursing facility bed is not available at the time it is needed;

(22) If the resident is offered a priority for nursing facility admission at a facility that is not owned by the continuing care facility, describe with which nursing facility the formal arrangement is made and what will occur if a nursing facility bed is not available at the time it is needed;

(23) Include the policy and procedures for determining under what circumstances a resident will be considered incapable of independent living and will require a permanent move to a nursing facility;

(24) Specify the types of insurance, if any, the resident must maintain, including Medicare, other health insurance, and property insurance;

(25) Specify the circumstances, if any, under which the resident will be required to apply for Medicaid, public assistance, or any other public benefit programs;

(26) State that the provider has filed a disclosure statement with the department and state the contents of the disclosure statement required by § 23-93-106(a)(3); and

(27) State, in bold and conspicuous type, the following:

"THIS CONTRACT IS GOVERNED BY THE CONTINUING CARE PROVIDER REGULATION ACT. THE PROVIDER HAS FILED A DISCLOSURE DOCUMENT WITH THE INSURANCE COMMISSIONER OF THE STATE OF ARKANSAS PRIOR TO OFFERING THIS CONTRACT. THE INSURANCE COMMISSIONER HAS NOT PASSED UPON THE VALIDITY OF THE INFORMATION FILED BY THE PROVIDER, DOES NOT MAKE ANY RECOMMENDATION WITH RESPECT TO THE FAIRNESS OF THE CHARGES MADE BY THE PROVIDER, HAS NOT CONDUCTED AN INDEPENDENT REVIEW OF THE FINANCIAL STRENGTH OF THE PROVIDER AND DOES NOT WARRANT THE ENFORCEABILITY OF ANY CONTRACT OFFERED BY THE PROVIDER. NO PROSPECTIVE RESIDENT SHOULD RELY UPON THE FACT THAT A FILING HAS BEEN MADE WITH THE COMMISSIONER IN MAKING THEIR DECISION. EACH PROSPECTIVE RESIDENT SHOULD CONSULT HIS OWN LEGAL AND FINANCIAL ADVISERS PRIOR TO ENTERING INTO ANY CONTRACT WITH THE PROVIDER."

History. Acts 1987, No. 329, § 5.

23-93-109. Right to rescind contracts.

For a seven-day period beginning on the date a provider receives any payment from a prospective resident, a prospective resident shall have the right to rescind any contractual obligation into which he or she has entered and receive a full refund of any moneys transferred to the provider.

History. Acts 1987, No. 329, § 6.

23-93-110. Untrue, deceptive, or misleading statements prohibited.

(a) No provider shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement of any sort containing any assertion, representation, or untrue, deceptive, or misleading statement.

(b) No provider shall file with the State Insurance Department or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person, or placed before the public any financial statement which does not accurately state its true financial condition.

History. Acts 1987, No. 329, § 7.

23-93-111. Liquid refund reserve requirement.

(a)(1) Each provider shall establish and maintain liquid refund reserves in an amount determined in accordance with this section.

(2)(A) The refund reserve shall be equal to or shall exceed the actuarially determined annual refund amount as of the financial reporting date.

(B) The actuarially determined annual refund amount shall be calculated upon both the actual experience of the facility and published industry norms.

(C) The method which yields the greater sum shall determine the actuarially determined annual refund amount for the purposes of this section and § 23-93-106(a)(8).

(b) The provider may satisfy the liquid reserve requirement by:

(1) Holding the reserve amount in an escrow account with a federally insured financial institution or institutions located and doing business in this state;

(2) Purchasing a certificate of deposit from an Arkansas lending institution;

(3) Investing in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States of America held in the provider's name and held by the provider within the State of Arkansas;

(4) Having the unqualified guaranty of an affiliated organization or individual, as evidenced by a written agreement, whose net worth as reported in its most recent financial statement audited by a certified public accountant and certified by the provider and filed with the State Insurance Department, which is equal to five (5) times the reserve amount or portion of the reserve amount to be satisfied by this method; or

(5) Any combination of the foregoing.

(c) When requested by the Insurance Commissioner, the provider shall furnish all of the information relating to the amount of the reserve and the method used to maintain the reserve amount.

History. Acts 1987, No. 329, § 8; 1989, No. 203, § 3.

23-93-112. Escrow account required.

(a)(1) The Insurance Commissioner shall require that the provider establish an interest-bearing escrow account with a financial institution authorized to do business in this state. Any entrance fees or payments received by the provider prior to the date the resident is permitted to occupy the living unit in the facility shall be placed in the escrow account.

(2) Release of escrowed amounts to the provider shall be made as follows:

(A) For living units that have been previously occupied, at the time the new resident makes the first monthly payment; or

(B) For living units not previously occupied, at the earliest to occur of one (1) of the following:

(i) When aggregate fees received or receivable equal fifty percent (50%) of total entrance fees due at full occupancy, except that any entrance fee payments that are less than thirty-five percent (35%) of the amount due from a resident will not be counted;

(ii) When entrance fees plus the proceeds of any first mortgage or other long-term loan in lieu of a first mortgage, plus other funds on hand, equal fifty percent (50%) of the total cost of the facility plus fifty percent (50%) of the start-up losses shown in the provider's application submitted under § 23-93-207; or

(iii) When a permanent mortgage or other long-term loan commitment has been received and the mortgagee's commitment conditions prior to disbursement, other than completing construction and closing the purchase, have been satisfied.

(b) If the funds in an escrow account and any interest earned on the funds are not released within thirty-six (36) months, or such greater time as may have been specified by the provider with the consent of the

commissioner, then the funds shall be returned by the escrow agent to the persons who made the payment to the provider.

(c) Nothing in this section shall require the escrow of any nonrefundable application fees charged to prospective residents.

(d) An entrance fee held in escrow may be returned by the escrow agent at any time to the person or persons who paid the entrance fee to the provider upon receipt by the escrow agent of notice from the provider that such a person is entitled to a refund of the entrance fee.

History. Acts 1987, No. 329, § 9; 1995, No. 1351, § 1.

23-93-113. Statutory lien.

In the event of the bankruptcy or receivership of the provider resulting from the financial difficulties of the provider, the residents of the facility shall have a statutory lien on the real and personal property of the facility. This lien shall be subordinate to liens of record prior to the date of a filing of a petition in bankruptcy or petition for receivership but shall be superior to all other creditors.

History. Acts 1987, No. 329, § 10.

23-93-114. Investigations and examinations.

(a) The State Insurance Department may conduct any investigation or examination deemed necessary by the Insurance Commissioner:

(1) For the public health, safety, and welfare of a resident or potential resident of a facility;

(2) In response to a written complaint filed by a resident or prospective resident;

(3) If it appears from the filings required by this subchapter that the solvency of the facility is in question; or

(4) To determine whether any provision of this subchapter or any rule or order has been violated.

(b) The commissioner may conduct any investigation in person or direct any department employee to act on the commissioner's behalf. For any on-site investigation, the expenses incurred, including compensation of any department examiner, shall be paid by the facility being investigated. For the purposes of this section, the provisions of § 23-61-206 shall apply.

(c) The commissioner may conduct a financial examination. The commissioner may utilize department examiners or he or she may retain independent certified public accountants to conduct the examination. Each facility being examined shall pay the department the expenses incurred pursuant to § 23-61-206. The cost of any retained accountants shall not be in excess of the amount that could be charged for department examiners.

(d) When the services of an actuary are deemed necessary in any investigation or examination, the commissioner may retain an independent actuary with those expenses being paid by the facility.

(e) The commissioner or any officer designated by the commissioner may adminster oaths and affirmations, issue subpoenas, hear testimony, and take evidence in reference to any investigation or examination conducted pursuant to this subchapter.

History. Acts 1987, No. 329, § 11; 1989, No. 203, § 4.

Subchapter 2 — Licensing

SECTION.
23-93-201. Definitions.
23-93-202. Continuing Care Provider Regulation Act — Applicability
23-93-203. License not transferable — Limitation on contracts.
SECTION.
23-93-204. Issuance of license.
23-93-205. Violations.
23-93-206. Fees.
23-93-207. Application.

23-93-201. Definitions.

As used in this subchapter:

(1) "Commissioner" means the Insurance Commissioner;

(2) "Department" means the State Insurance Department;

(3) "Entrance fee" means a payment that assures a resident a place in a facility for a term of years or for life;

(4) "Facility" means a place which provides life care;

(5) "Hazardous financial condition" means a provider is insolvent or in imminent danger of becoming insolvent;

(6) "Life care" means continuing care as defined in § 23-93-103(2), except that no additional charges are made for nursing care or personal care services beyond those charged all residents of the facility who are not receiving nursing care or personal care services;

(7) "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one (1) or more identified individuals;

(8)(A) "Nursing care" means those services pertaining to the curative, restorative, and preventive aspects of nursing services that are performed by or under the supervision of a registered or licensed nurse.

(B) "Nursing care" does not include general health service such as nutritional counseling, exercise programs, or other preventive medicine techniques;

(9)(A) "Personal care services" means assistance with meals, dressing, movement, bathing, or other personal needs of maintenance or other direct supervision and oversight of the physical and mental well-being of a person.

(B) "Personal care services" does not include general health services such as nutritional counseling, exercise programs, or other preventive medicine techniques;

(10) "Provider" means the owner or operator, whether a natural person, partnership, or other incorporated association, trust, or corporation whose owner or operator undertakes to provide life care for a fee, whether fixed or variable, for the period of care. The fee may be payable in lump sum, or lump sum and monthly maintenance charges, or in installments;

(11) "Refund reserve" means the actuarially determined annual refund amount required to be maintained by a life care provider for service of its refund amounts during the next fiscal year of the facility;

(12) "Resident" means an individual entitled to receive life care in a facility; and

(13) "Solicit" means all actions of a provider in seeking to have individuals residing in this state pay an application fee and enter into a life care agreement by any means, such as, but not limited to, personal, telephone, or mail communication, or any other communication directed to and received by any individual in this state, and any advertisements in any media distributed or communicated by any means to individuals in this state.

History. Acts 1993, No. 787, § 1.

23-93-202. Continuing Care Provider Regulation Act — Applicability.

(a) In addition to the provisions of this subchapter, life care providers shall be subject to the provisions of the Continuing Care Provider Regulation Act, § 23-93-101 et seq.

(b) No life care provider shall be established, conducted, or maintained in this state without obtaining a license from the Insurance Commissioner. However, life care providers established prior to August 13, 1993, shall be licensed without application or payment of a fee.

History. Acts 1993, No. 787, §§ 2, 3.

23-93-203. License not transferable — Limitation on contracts.

(a) No license is transferable, and no license issued pursuant to this subchapter has value for sale or exchange as property.

(b) No provider or other owning entity shall sell or transfer ownership of the facility or enter into a contract with a third-party provider for management of the facility unless the State Insurance Department approves such a transfer or contract.

History. Acts 1993, No. 787, § 4.

23-93-204. Issuance of license.

The State Insurance Department shall issue a license upon its affirmative determination that all of the following requirements have been met:

(1) The provider can fulfill its obligation under the life care contract if the resident complies with the terms of the offer;

(2) There is reasonable assurance that all proposed improvements can be completed as represented;

(3) The provider, its officers, and principals have not been convicted of a crime in this state, the United States, or any other state or foreign country within the past ten (10) years, the seriousness of which in the opinion of the department warrants the denial of a permit;

(4) The provider, its officers, and principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving a facility disposition, the seriousness of which in the opinion of the department warrants the denial of a permit; and

(5) The disclosure statement requirements of the Continuing Care Provider Regulation Act, § 23-93-101 et seq., have been satisfied.

History. Acts 1993, No. 787, § 7.

23-93-205. Violations.

(a) The license of a provider shall remain in effect until revoked after notice and hearing upon written finding of fact by the State Insurance Department that the provider has:

(1) Willfully violated any provision of this subchapter, or any regulation promulgated under this subchapter;

(2) Failed to file an annual disclosure statement or standard form of contract as required by the Continuing Care Provider Regulation Act, § 23-93-101 et seq.;

(3) Delivered to a prospective resident a disclosure statement that makes an untrue statement or omits a material fact, and the provider, at the time of the delivery of the disclosure statement, had actual knowledge of the misstatement or omission;

(4) Failed to comply with the terms of a cease and desist order issued pursuant to § 23-93-104; or

(5) Has been determined by the department to be in a hazardous financial condition.

(b) Findings of fact in support of revocation shall be accompanied by an explicit statement of the underlying facts supporting the finding.

History. Acts 1993, No. 787, § 8.

23-93-206. Fees.

(a)(1) An application for a license shall consist of a statement containing the items set forth in this subchapter, together with a filing fee in the amount of four hundred dollars ($400) plus forty dollars ($40.00) per living unit made payable to the Treasurer of State.

(2) In the event living units are added during the application process, an additional fee of forty dollars ($40.00) per living unit shall be paid.

(b)(1) Upon receipt of the complete application for a license, the State Insurance Department shall issue a notice of filing to the applicant within ten (10) business days.

(2) Within ninety (90) days of the notice of filing, the department shall enter an order issuing the license or rejecting the application.

(c)(1) If the Insurance Commissioner determines that any of the application requirements have not been met, the commissioner shall notify the applicant that the application must be corrected within thirty (30) days in those particulars designated by the commissioner.

(2)(A) If the requirements are not met within the time allowed, the commissioner may enter an order rejecting the application. The order shall include the finding of fact upon which the order is based and which shall not become effective until twenty (20) days after the end of the thirty-day period.

(B) During the twenty-day period, the applicant may petition for reconsideration and is entitled to a hearing.

(d) If a facility is accredited by a process approved by the commissioner as substantially equivalent to the requirements of this subchapter, then the facility shall be deemed to have met the requirements of this subchapter and the commissioner shall issue a license to the facility.

History. Acts 1993, No. 787, § 5.

23-93-207. Application.

The application for a license shall contain the following documents and information:

(1)(A) An appointment of an Arkansas resident to serve as the registered agent for the provider shall be filed with the State Insurance Department. Thereafter, the registered agent shall be authorized to receive service of any lawful process in any proceeding arising under this subchapter against the provider or his or her agents.

(B) On and after January 1, 2003, all licensed life care providers shall file with the Insurance Commissioner a designation of an Arkansas resident as an agent for service of legal process, and the commissioner shall maintain a listing in conformity with § 23-63-301 et seq.;

(2) The states or other jurisdictions, including the federal government, in which an application for certification or similar documents for the subject facility have been or will be filed and any order, judgment,

or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

(3) The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent (10%) or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;

(4)(A) Copies of:

(i) The articles of incorporation, with all amendments thereto, if the provider is a corporation;

(ii) All instruments by which the trust is created or declared, if the provider is a trust; and

(iii) The articles of partnership or association and all other organization papers, if the provider is organized under another form.

(B) In the event the provider is not the legal title holder to the property upon which the facility is or is to be constructed, the documents listed in subdivision (4)(A) of this section shall be submitted for both the provider and the legal title holder;

(5)(A) A legal description by metes and bounds or other acceptable means of the lands to be certified and the relationship of such lands to existing streets, roads, and other improvements, together with a map showing the proposed or actual facility and the dimensions of the living units as available, except for living units that are completed and available for inspection.

(B) The map shall be drawn to scale, signed, and sealed by a professional engineer as defined in § 17-30-101 or a professional surveyor as defined in § 17-48-101;

(6) Copies of the deed or other instrument establishing title of the provider and a title search, title report, or title certificate, or a binder or policy issued by a licensed title insurance company;

(7) A statement concerning any litigation, orders, judgments, or decrees which might affect the offering;

(8) A statement that the life care agreements will be offered to the public and entered into without regard to marital status, sex, race, creed, or national origin or, if not, any legally permissible restrictions on purchase that will apply;

(9) A statement of the present conditions of physical access to the facility and the existence of any material adverse conditions that affect the facility that are known, should be known, or are readily ascertainable;

(10) Copies of all contracts and agreements which the resident may be required to execute;

(11) In the event there is or will be a blanket encumbrance affecting the facility or a portion thereof, a copy of the document creating it and a statement of the consequences upon a resident of a failure of the person bound to fulfill the obligations under which the instrument and the manner in which the interest of the resident is to be protected in the event of such an eventuality;

(12) One (1) copy of the proposed disclosure statement required under § 23-93-106;

(13) A current financial statement of the provider and any related predecessor, parent, or subsidiary company, including, but not limited to, a current profit and loss statement and balance sheet audited by an independent public accountant;

(14) A statement concerning any adjudication of bankruptcy during the last five (5) years against the provider, its predecessor, parent, or subsidiary company, and any principal owning more than ten percent (10%) of the interests in the facility at the time of the filing of the application for certification. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

(15) Copies of all easements and restrictions, whether of record or not;

(16) A statement as to the status of compliance with all the requirements of all laws, ordinances, and regulations of governmental agencies having jurisdiction over the construction, permitting, and licensing of the facility, together with copies of all necessary federal, state, county, and municipal approvals;

(17) A statement that neither the provider nor any of its officers or principals have ever been convicted of a crime in this state or a foreign jurisdiction and that the provider has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving continuing care facility disposition or, if so, copies of all pleadings and orders in regard thereto;

(18) A projected annual budget for the facility for the next five (5) years or such lesser time as the department allows;

(19) Copies of market studies, if any, prepared on behalf of the provider concerning the feasibility of the project;

(20) An affidavit signed by the provider that the contents of the application are true and accurate and made in good faith; and

(21) Such other additional information as the department may require in individual cases after review of an application for certification to assure full and fair disclosure.

History. Acts 1993, No. 787, § 6; 2001, No. 1604, § 118; 2005, No. 1178, § 16; 2011, No. 897, § 18; 2011, No. 898, § 8.

Amendments. The 2011 amendment by No. 897 substituted "a professional engineer as defined in § 17-30-101 or a professional surveyor as defined in § 17-48-101" for "a licensed professional engineer or professional surveyor" in (5)(B).

The 2011 amendment by No. 898 substituted "a licensed professional engineer as defined in § 17-30-101 or a professional surveyor as defined in § 17-48-101" for "a licensed professional engineer or professional surveyor" in (5)(B).

CHAPTER 94

LIABILITY RISK RETENTION

SUBCHAPTER.

1. General Provisions. [Reserved.]
2. Risk Retention and Purchasing Groups Act.
3. Exemptions. [Repealed.]

Publisher's Notes. Former Chapter 94, concerning liablity risk retention, was repealed by Acts 1995, No. 623, § 2. The former chapter was derived from the following sources:

23-94-101. Acts 1987, No. 408, § 1.
23-94-102. Acts 1987, No. 408, § 2.
23-94-103. Acts 1987, No. 408, §§ 21, 24; 1989, No. 891, §§ 1, 2.
23-94-104. Acts 1987, No. 408, § 22; 1989, No. 891, § 3.
23-94-105. Acts 1987, No. 408, § 23; 1989, No. 891, § 4.
23-94-106. Acts 1987, No. 408, § 20.
23-94-107. Acts 1987, No. 408, § 26.
23-94-108. Acts 1987, No. 408, § 25.
23-94-201. Acts 1987, No. 408, § 3.
23-94-202. Acts 1987, No. 408, § 4; 1989, No. 891, § 5; 1991, No. 1123, § 17.
23-94-203. Acts 1987, No. 408, §§ 5, 6.
23-94-204. Acts 1987, No. 408, §§ 7, 8.
23-94-205. Acts 1987, No. 408, § 9; 1989, No. 891, § 6.
23-94-206. Acts 1987, No. 408, § 10.
23-94-207. Acts 1987, No. 408, § 16.
23-94-208. Acts 1987, No. 408, §§ 11-13, 15.
23-94-209. Acts 1987, No. 408, § 14.
23-94-301. Acts 1987, No. 408, § 17.
23-94-302. Acts 1987, No. 408, § 18; 1989, No. 891, § 7.
23-94-303. Acts 1987, No. 408, § 19.

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — Risk Retention and Purchasing Groups Act

SECTION.

23-94-201. Title.
23-94-202. Purpose.
23-94-203. Definitions.
23-94-204. Domestic risk retention groups.
23-94-205. Foreign risk retention groups.
23-94-206. Compulsory associations.
23-94-207. Purchasing groups — Exemption from certain laws.
23-94-208. Notice and registration requirements of purchasing groups.
23-94-209. Restrictions on insurance purchased by purchasing groups.
23-94-210. Taxation.
23-94-211. License fees.
23-94-212. Administrative and procedural authority regarding risk retention groups and purchasing groups.
23-94-213. Duty of agents or brokers to obtain license.
23-94-214. Binding effect of orders issued in United States District Court.
23-94-215. Rules and regulations.

Publisher's Notes. As to the repeal of former subchapter 2, see the Publisher's Notes at the beginning of this chapter.

Effective Dates. Acts 1995, No. 623, § 6: Mar. 14, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present insurance laws are not sufficient to protect the Arkansas insurance buying public. It is determined that it is in the best interests of the State of Arkansas that the laws in this act be adopted immediately so that the Arkansas Insurance Department can better regulate the insurance industry. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department's regulation of agents, brokers, surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 580, § 29: July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002."

23-94-201. Title.

This subchapter may be cited as the "Risk Retention and Purchasing Groups Act".

History. Acts 1995, No. 623, § 1.

23-94-202. Purpose.

The purpose of this subchapter is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the Liability Risk Retention Act of 1986 ("RRA 1986"), to the extent permitted by such law.

History. Acts 1995, No. 623, § 1.

U.S. Code. The Liability Risk Retention Act of 1986, referred to in this section, is codified as 15 U.S.C. § 3901 et seq.

23-94-203. Definitions.

As used in this subchapter:

(1) "Commissioner" means the Insurance Commissioner of this state or the commissioner, director, or superintendent of insurance in any other state;

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(A) Any person who performs that work; or

(B) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

(3) "Department" means the State Insurance Department;

(4) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

(A) For a corporation, the state in which the purchasing group is incorporated; and

(B) For an unincorporated entity, the state of its principal place of business;

(5) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

(A) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) To pay other obligations in the normal course of business;

(6) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state;

(7) "Liability":

(A) Means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

(i) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations; or

(ii) Any activity of any state or local government, or any agency or political subdivision thereof; and

(B) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Employers' Liability Act, 45 U.S.C. § 51 et seq.;

(8) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subdivision (7) of this section;

(9) "Plan of operation" or "feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(A) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises, or operations;

(B) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(C) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(D) Pro forma financial statements and projections;

(E) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(F) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;

(G) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and

(H) Such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

(10) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

(11) "Purchasing group" means any group which:

(A) Has as one of its purposes the purchase of liability insurance on a group basis;

(B) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision (11)(C) of this section;

(C) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) Is domiciled in any state;

(12) "Risk retention group" means any corporation or other limited liability association:

(A) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) Which is organized for the primary purpose of conducting the activity described under subdivision (12)(A) of this section;

(C) Which:

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one (1) state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986;

(D) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) Which:

(i) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) Has as its sole owner an organization which has as:

(a) Its members, only persons who comprise the membership of the risk retention group; and

(b) Its owners, only persons who comprise the membership of the risk retention group and who are provided insurance by the risk retention group;

(F) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(G) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its risk retention group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group, or any members of such other group, which is engaged in businesses or activities so that the group or member meets the requirement described in subdivision (12)(F) of this section from membership in the risk retention group which provides such reinsurance; and

(H) The name of which includes the phrase "Risk Retention Group"; and

(13) "State" means any state of the United States or the District of Columbia.

History. Acts 1995, No. 623, § 1.

U.S. Code. The Product Liability Risk Retention Act of 1981, referred to in this section, was amended by Congress and renamed the Liability Risk Retention Act of 1986 and is codified as 15 U.S.C. § 3901 et seq.

23-94-204. Domestic risk retention groups.

(a)(1) To be organized as a risk retention group in this state, the risk retention group must be organized and licensed to write only casualty insurance pursuant to this subchapter and, except as provided elsewhere in this subchapter, must comply with all of the laws, rules, regulations, and requirements applicable to such insurers licensed in this state and with § 23-94-205 to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. The commissioner shall issue a certificate of registration to a risk retention group organized, formed, or domiciled under the laws of this state when the commissioner is satisfied that the applicant group has fully complied with the provisions of this subchapter. No risk retention group organized, formed, or domiciled under the laws of this state shall transact business in this state unless so authorized by a subsisting certificate of registration issued by the commissioner.

(2) Notwithstanding any other provision to the contrary, all risk retention groups domiciled in this state shall file, annually on or before March 1, or within any extension of time therefor which the commissioner for good cause may have granted, with the State Insurance Department and the National Association of Insurance Commissioners, an annual statement in a form prescribed by the National Association of Insurance Commissioners and in diskette form, if required by the commissioner and completed in accordance with its instructions and the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual.

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten (10) days of any such change. The risk retention group shall not offer any additional kinds of casualty insurance, in this state or in any other state, until a revision of the plan of operation or feasibility study is approved by the commissioner.

(c) At the time of filing its application for a certificate of registration, the risk retention group shall provide to the commissioner in summary form the following information: the identity of the initial members of the risk retention group, the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group,

the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the risk retention group intends to operate. Upon receipt of this information, the commissioner shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of § 23-94-205 or any other sections of this subchapter.

History. Acts 1995, No. 623, § 1.

23-94-205. Foreign risk retention groups.

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state must apply for and obtain a certificate of registration from the commissioner using the forms prescribed by the State Insurance Department. The commissioner shall issue a certificate of registration to risk retention groups chartered and licensed under the laws of other states when the commissioner is satisfied that the applicant groups have complied with the provisions of this subchapter. No risk retention group chartered and licensed in states other than this state shall transact business in this state unless so authorized by a subsisting certificate of registration issued by the commissioner. Each such group shall comply with the laws of this state as follows:

(1) Notice of Operations and Designation of Commissioner as Agent.

(A) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the National Association of Insurance Commissioners:

(i) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and such other information, including information on its membership, as the commissioner may require to verify that the risk retention group is qualified under § 23-94-203(12);

(ii) A copy of its plan of operation or feasibility study and revisions of the plan of operation or feasibility study submitted to the state in which the risk retention group is chartered and licensed, provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(a) Was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(b) Was offered before that date by any risk retention group which had been chartered and operating for not less than three (3) years before that date; and

(B) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required pursuant to § 23-

94-204(b) at the same time that such revision is submitted to the commissioner of its chartering state.

(C) The risk retention group shall submit a statement of registration, for which a filing fee shall be determined by the commissioner, which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) Financial Condition. Any risk retention group doing business in this state shall submit to the commissioner annually on or before March 1, or within any extension of time therefor which the commissioner for good cause may have granted, an annual statement in a form prescribed by the National Association of Insurance Commissioners and completed in accordance with the instructions and the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual. Additional information that must be submitted to the commissioner by the risk retention group doing business in this state shall include all of the following:

(A) A copy of the risk retention group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(B) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(C) Upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(D) Such information as may be required to verify its continuing qualification as a risk retention group under § 23-94-203(12).

(3) Agent and Broker Records. To the extent that insurance agents or brokers are utilized pursuant to § 23-94-213, such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the commissioner. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

(A) The limit of liability;

(B) The time period covered;

(C) The effective date;

(D) The name of the risk retention group which issued the policy;

(E) The gross premium charged; and

(F) The amount of return premiums, if any.

(4) Compliance with Trade Practices Act. Any risk retention group, its agents, and its representatives shall comply with the provisions of the Trade Practices Act, § 23-66-201 et seq., and other pertinent provisions of the Arkansas Insurance Code. Any risk retention group, its agents, and its representatives shall comply with the provisions of the claims

settlement practices in § 23-66-206(9) and (10) and other pertinent provisions of the Arkansas Insurance Code. Any risk retention group shall comply with the provisions of Arkansas law regarding deceptive, false, or fraudulent acts or practices. If the commissioner seeks an injunction regarding deceptive, false, or fraudulent conduct, the injunction must be from a court of competent jurisdiction.

(5) Examination Regarding Financial Condition. Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the risk retention group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the most current edition of the National Association of Insurance Commissioners' Financial Condition Examiners Handbook.

(6) Notice to Purchasers. Every application form for insurance from a risk retention group, and every policy on its front and declaration pages issued by a risk retention group, shall contain in 10-point type the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.".

(7) Prohibited Acts Regarding Solicitation or Sale. The following acts by a risk retention group are hereby prohibited:

(A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the risk retention group; and

(B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(8) Prohibition on Ownership by an Insurance Company. No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(9) Prohibited Coverage. The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

(10) Delinquency Proceedings. A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has

been a finding of financial impairment after an examination under subdivision (5) of this section.

(11) Penalties. A risk retention group that violates any provision of this subchapter will be subject to fines and penalties, including revocation of its right to do business in this state, applicable to licensed insurers generally.

(12) Operation Prior to Enactment of This Subchapter. In addition to complying with the requirements of this section, any risk retention group operating in this state prior to March 14, 1995, shall, within thirty (30) days after March 14, 1995, comply with the provisions of subdivision (1)(A) of this section.

History. Acts 1995, No. 623, § 1.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

U.S. Code. The Product Liability Risk Retention Act of 1981, referred to in this section, was amended by Congress and renamed the Liability Risk Retention Act of 1986 and is codified as 15 U.S.C. § 3901 et seq.

23-94-206. Compulsory associations.

(a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by a risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the appropriate state guaranty fund.

History. Acts 1995, No. 623, § 1.

23-94-207. Purchasing groups — Exemption from certain laws.

A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

(1) Prohibit the establishment of a purchasing group;

(2) Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in subdivision (2) of this section;

(4) Prohibit a purchasing group from obtaining insurance on a group basis because the purchasing group has not been in existence for a minimum period of time or because any member has not belonged to the purchasing group for a minimum period of time;

(5) Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) Require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) Otherwise discriminate against a purchasing group or any of its members; or

(8) Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

History. Acts 1995, No. 623, § 1.

23-94-208. Notice and registration requirements of purchasing groups.

(a) A purchasing group which intends to do business in this state must obtain a certificate of registration from the commissioner. The commissioner shall issue a certificate of registration to a purchasing group organized and formed under the laws of any state when the commissioner is satisfied that the applicant group has fully complied with the provisions of this subchapter. Each purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall, on forms prescribed by the National Association of Insurance Commissioners:

(1) Identify the state in which the purchasing group is domiciled;

(2) Identify all other states in which the purchasing group intends to do business;

(3) Specify the lines and classifications of casualty insurance which the purchasing group intends to purchase;

(4) Identify the insurance company or companies from which the purchasing group intends to purchase its insurance and the domicile of such company;

(5) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(6) Identify the principal place of business of the purchasing group; and

(7) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified for a certificate of registration.

(b) A purchasing group shall, within ten (10) days, notify the commissioner of any changes in any of the items set forth in subsection (a) of this section.

(c) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee shall be determined by the commissioner, except that such requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the Product Liability Risk Retention Act of 1981, and:

(1) Which in any state of the United States:

(A) Was domiciled before April 1, 1986; and

(B) Is domiciled on and after October 27, 1986;

(2) Which:

(A) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and

(B) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; or

(3) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

(d) Each purchasing group that is required to give notice pursuant to subsection (a) of this section shall also furnish such information as may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group;

(2) Determine where the purchasing group is located; and

(3) Determine appropriate tax treatment.

(e) Any purchasing group which was doing business in this state prior to March 14, 1995, shall, within thirty (30) days after March 14, 1995, furnish notice to the commissioner pursuant to the provisions of subsection (a) of this section and furnish such information as may be required pursuant to subsections (b) and (c) of this section.

History. Acts 1995, No. 623, § 1.

U.S. Code. The Product Liability Risk Retention Act of 1981, referred to in this section, was amended by Congress and renamed the Liability Risk Retention Act of 1986 and is codified as 15 U.S.C. § 3901 et seq.

23-94-209. Restrictions on insurance purchased by purchasing groups.

(a) A purchasing group may not purchase insurance from a risk retention group that does not hold a certificate of registration in this state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus line laws and regulations of such state.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and regulations of this state.

(c) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole;

however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

History. Acts 1995, No. 623, § 1.

23-94-210. Taxation.

(a) Each authorized risk retention group shall, on or before March 1 of each year, file with the commissioner on forms prescribed by the commissioner a statement for the preceding calendar year showing all premiums paid to the risk retention group for risks insured within this state.

(b) Coincident with the filing of the report, each authorized risk retention group shall submit to the Treasurer of State through the commissioner, as a tax imposed for the privilege of transacting business as a risk retention group within this state, a tax of four percent (4%) on all premiums paid for coverages within this state to the risk retention group within the preceding calendar year as shown by the annual statement filed with the commissioner.

(c) Agents or brokers shall report in an annual statement and pay the four percent (4%) tax on or before March 1 of each year for the premiums for risks which they have placed within the preceding calendar year with or on behalf of a risk retention group not authorized to do business in this state by a subsisting certificate of registration issued by the commissioner.

(d) Any risk retention group, agent, or broker who fails to file the annual statement or fails to remit the tax as provided by law on March 1 when the tax is due shall be liable for a fine of one hundred dollars ($100) for each day of delinquency commencing with March 1. However, for good cause shown, the commissioner, after a written request, may grant a reasonable extension of time within which the statement may be filed and the tax paid. The tax may be collected by distraint, or the tax and fine may be covered by an action instituted by the commissioner in any court of competent jurisdiction. The commissioner shall pay to the Treasurer of State any fine so collected.

History. Acts 1995, No. 623, § 1.

23-94-211. License fees.

The provisions as to fees for obtaining and continuing licenses for insurers, agents, and brokers under § 23-61-401 shall be applicable to risk retention groups, purchasing groups, risk retention group agents and purchasing group brokers, resident surplus lines brokers, and nonresident surplus lines purchasing group brokers under the provisions of this subchapter and the Surplus Lines Insurance Law, § 23-

65-301 et seq., except as they conflict with the provisions of the Liability Risk Retention Act of 1986.

History. Acts 1995, No. 623, § 1.
U.S. Code. The Liability Risk Retention Act of 1986, referred to in this section, is codified as 15 U.S.C. § 3901 et seq.

23-94-212. Administrative and procedural authority regarding risk retention groups and purchasing groups.

The commissioner is authorized to make use of any of the powers established under the Arkansas Insurance Code to enforce the laws of this state not specifically preempted by the Liability Risk Retention Act of 1986, including the commissioner's administrative authority to investigate, issue subpoena, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural laws of this state. The injunctive authority of the commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

History. Acts 1995, No. 623, § 1.
A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.
U.S. Code. The Liability Risk Retention Act of 1986, referred to in this section, is codified as 15 U.S.C. § 3901 et seq.

23-94-213. Duty of agents or brokers to obtain license.

(a) Risk Retention Group Agents. Any person acting, or offering to act, as an agent or broker for a registered risk retention group which solicits members, sells insurance coverage, or otherwise does business in this state shall, before commencing any such activity, obtain a resident or nonresident risk retention group agent license from the commissioner upon completion of the licensing provisions as to resident and nonresident agents or brokers under § 23-64-101 et seq., §§ 23-64-201 — 23-64-205, 23-64-207, 23-64-209, 23-64-210, 23-64-214 — 23-64-221, 23-64-223 — 23-64-227, and the Producer Licensing Model Act, § 23-64-501 et seq., except as they conflict with the provisions of the Liability Risk Retention Act of 1986.

(b) Purchasing Group Brokers.

(1) Any person acting, or offering to act, as an agent or broker for a registered purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise doing business in this state shall, before commencing any such activity, obtain a resident or nonresident purchasing group broker license from the commissioner upon completion of the licensing provisions as to resident and nonresident agents or brokers under § 23-64-101 et seq., §§ 23-64-201 — 23-64-205, 23-64-207, 23-64-209, 23-64-210, 23-64-214 — 23-64-221, 23-64-223 — 23-64-227, and the Producer Licensing Model Act, § 23-64-501 et seq., except as they conflict with

the provisions of the Liability Risk Retention Act of 1986, before securing the purchasing group's coverage with an authorized insurer or a registered risk retention group. This requirement shall not be applicable to property and casualty agents or brokers duly licensed by this state as to the authorized insurer or risk retention group issuing the purchasing group's coverage, so long as these licenses comply with other provisions of this subchapter.

(2) Any person acting, or offering to act, as an agent or broker for a purchasing group registered in Arkansas and procuring insurance from an approved nonadmitted surplus lines insurer shall either:

(A) First obtain a property and casualty agent or broker's license or purchasing group broker's license from this state, prior to placing the purchasing group's coverage through a surplus lines broker duly licensed by the State of Arkansas; or

(B) First obtain a resident Arkansas surplus lines broker's license, or a nonresident Arkansas surplus lines broker's license, prior to placing the group's coverage with the surplus lines insurer.

(3) The provisions of this section shall be in conformity with the provisions of this subchapter, § 23-64-101 et seq., §§ 23-64-201 — 23-64-205, 23-64-207, 23-64-209, 23-64-210, 23-64-214 — 23-64-221, 23-64-223 — 23-64-227, the Producer Licensing Model Act, § 23-64-501 et seq., and the Surplus Lines Insurance Law, § 23-65-301 et seq., except as they conflict with the provisions of the Liability Risk Retention Act of 1986.

History. Acts 1995, No. 623, § 1; 2001, No. 580, § 24; 2001, No. 1555, § 18.

U.S. Code. The Liability Risk Retention Act of 1986, referred to in this section, is codified as 15 U.S.C. § 3901 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-94-214. Binding effect of orders issued in United States District Court.

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state, or in all states or in any territory or possession of the United States, upon a finding that the risk retention group is in hazardous financial or financially impaired condition shall be enforceable in the courts of the state.

History. Acts 1995, No. 623, § 1.

23-94-215. Rules and regulations.

The commissioner may establish and from time to time amend such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of this subchapter.

History. Acts 1995, No. 623, § 1.

Subchapter 3 — Exemptions

SECTION.
23-94-301 — 23-94-303. [Repealed.]

23-94-301 — 23-94-303. [Repealed.]

Publisher's Notes. As to the repeal of this subchapter, see the Publisher's Notes at the beginning of this chapter.

CHAPTER 95

RISK-SHARING PLANS FOR PROPERTY AND CASUALTY INSURANCE

SECTION.
23-95-101. Purpose.
23-95-102. Construction.
23-95-103. Governing board.
23-95-104. Plan for coverage — Requirement.
23-95-105. Plan for coverage — Contents.
23-95-106. Information for individuals.
23-95-107. No liability in creating plan.
23-95-108. Rules and regulations.

Effective Dates. Acts 1987, No. 896, § 11: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state concerning the insurance matters covered by this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

23-95-101. Purpose.

The purpose of this chapter is to provide for the establishment of risk-sharing plans for property or casualty insurance if the Insurance Commissioner determines that the insurance is not reasonably available in the voluntary market for the citizens of this state. This chapter is not intended to conflict with the provisions as to other risk-sharing plans established under prior law or in the Arkansas Insurance Code and, in particular, the provisions of §§ 23-88-301 and 27-19-106.

History. Acts 1987, No. 896, § 1.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-95-102. Construction.

This chapter shall be deemed cumulative of prior laws, and no prior law or part of a law shall be deemed to be in conflict with this chapter unless failure to so determine would prevent giving effect to an explicit provision of this chapter.

History. Acts 1987, No. 896, § 10.

23-95-103. Governing board.

There is created a governing board of seven (7) members to be appointed by the Insurance Commissioner which shall meet as necessary to review and prescribe operating procedures and rules to implement any plan promulgated pursuant to this chapter. The board shall be composed of the following members:

(1) The Insurance Commissioner, who shall serve as chair;

(2) Two (2) representatives from insurers licensed to operate in this state;

(3) Two (2) representatives who are licensed insurance agents in this state; and

(4) Two (2) consumer representatives.

History. Acts 1987, No. 896, § 6.

23-95-104. Plan for coverage — Requirement.

(a)(1) If the Insurance Commissioner finds after a hearing that in all or in any part of this state, any amount or kind of insurance authorized by §§ 23-62-104 and 23-62-105 is not reasonably available in the voluntary market and that the public interest requires the availability of that insurance, the commissioner shall direct insurers doing business within this state to prepare a voluntary plan which will provide that insurance coverage.

(2) The plan shall be submitted to the commissioner within the time he or she designates and, if approved by him or her, may be put into operation.

(3) If the plan is not approved by the commissioner or if the plan is not submitted as required, the commissioner may promulgate a plan to provide insurance coverage for any risks in this state which, based on reasonable underwriting standards, are entitled to obtain coverage, but are otherwise unable to obtain coverage in the voluntary market.

(b) All orders of the commissioner finding that a line of insurance is not reasonably available in the voluntary market shall consider, to the extent practicable, historical data from the past five (5) years regarding:

(1) Market availability;

(2) Major trends in policy forms, limits, and deductibles offered;

(3) Filed rates for the line if available;

(4) Loss ratios, claims severity, and claims frequency on both the state and national levels;

(5) Availability of surplus lines coverage;

(6) The types of insurers offering the line of insurance in the state;

(7) The existence of any residual market programs, market assistance programs, and captive insurance; and

(8) Whether alternatives to the creation of a risk-sharing plan are feasible.

(c) The commissioner may require licensed insurers and surplus lines companies to report historical data to assist the consideration of the factors contained in subsection (b) of this section.

(d) The commissioner shall afford any interested party an opportunity to submit written or oral testimony to assist in the determination required by subsection (a) of this section.

(e) The commissioner shall report to the Legislative Council all lines of insurance that he or she determines are not reasonably available in the voluntary market.

History. Acts 1987, No. 896, § 2; 2005, No. 1697, § 24.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-95-105. Plan for coverage — Contents.

(a) Each plan promulgated or prepared pursuant to § 23-95-104 shall:

(1) Give consideration to:

(A) The need for adequate and readily accessible coverage;

(B) Optional methods of improving the market affected;

(C) The inherent limitations of the insurance mechanism;

(D) The need for reasonable underwriting standards; and

(E) The requirement of reasonable loss prevention measures;

(2) Establish procedures that will create minimum interference with the voluntary market;

(3) Distribute the obligations imposed by the plan and any profits or losses experienced by the plan equitably and efficiently among the participating insurers;

(4) Establish procedures for applicants and participants to have their grievances reviewed by an impartial body. The filing and processing of a complaint or grievance pursuant to this section does not waive or stay the requirement for participation in the plan; and

(5) Establish a rating plan which shall be actuarially sound.

(b) Each plan may, on behalf of its participants:

(1) Issue policies of insurance to eligible applicants;

(2) Underwrite, adjust, and pay losses on insurance issued by the plan;

(3) Appoint a service company or companies to perform the functions enumerated in this subsection; and

(4) Obtain reinsurance for any part or all of its risks.

(c) Participation by the insurer in the losses and expenses of the plan shall be in the proportion that the direct written premiums of the insurer written in this state bears to the total aggregate written premium written in this state. Premiums which serve as the basis for participation in other risk-sharing plans established under prior law shall be excluded both from the insurer's direct written premium and the total aggregate direct written premium in determining participation in the losses and expenses of the plan.

(d) Each plan shall provide for:

(1) The method of classifying risks;

(2) The making and filing of rates which are not excessive, inadequate, or unfairly discriminatory and policy forms applicable to the various risks insured by the plan;

(3) The adjusting and processing of claims;

(4) The commission rates to be paid to agents or brokers for coverages written by the plan; and

(5) Any other insurance of investment functions that are necessary for the purpose of providing adequate and readily accessible coverage.

History. Acts 1987, No. 896, §§ 3-5.

23-95-106. Information for individuals.

Every participating insurer and agent shall provide to any person seeking the insurance available in each plan information about the services prescribed in the plan, including full information on the requirements and procedures for obtaining insurance under the plan.

History. Acts 1987, No. 896, § 7.

23-95-107. No liability in creating plan.

There shall be no liability on the part of and no cause of action shall arise against the Insurance Commissioner, his or her representatives, or any plan, its participants, or its employees for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this chapter.

History. Acts 1987, No. 896, § 8.

23-95-108. Rules and regulations.

The Insurance Commissioner shall have the authority to promulgate rules and regulations necessary to effectuate the purpose of this chapter.

History. Acts 1987, No. 896, § 9.

CHAPTER 96

ARKANSAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

SECTION.
23-96-101. Title.
23-96-102. Purpose.
23-96-103. Construction — Applicability.
23-96-104. Definitions.
23-96-105. Advertisement of association act in insurance sales — Notice to policy owners.
23-96-106. Scope of chapter.
23-96-107. Coverage.
23-96-108. Immunity.
23-96-109. Creation of the association — Examination — Annual report — Tax exemption — Board of directors.
23-96-110. Powers and duties of association.
23-96-111. Impaired insurers.
23-96-112. Insolvent insurers.
23-96-113. Authority of association when proceeding under § 23-96-111 or § 23-96-112
23-96-114. Liability for benefits — Assignment or subrogation of rights.
23-96-115. Assessments — Tax credits.
23-96-116. Plan of operation.
23-96-117. Detection and prevention of insolvencies or impairments.
23-96-118. Duties and powers of commissioner.
23-96-119. Distributions of ownership rights.
23-96-120. Payment of premiums.
23-96-121. Reissuance of terminated coverage.

Effective Dates. Acts 1989, No. 444, § 26: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current insurance laws of this State as to protection of Arkansas policyholders of insolvent life and disability insurers are inadequate, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-96-101. Title.

This chapter shall be known and cited as the "Arkansas Life and Health Insurance Guaranty Association Act".

History. Acts 1989, No. 444, § 1; 1997, No. 950, § 1; 2001, No. 1603, § 46.

23-96-102. Purpose.

(a) The purpose of this chapter is to protect, subject to certain limitations, the persons specified in § 23-96-107(a) against failure in the performance of contractual obligations under life and accident and health insurance policies and annuity contracts specified in § 23-96-107(b) because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(b) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

History. Acts 1989, No. 444, § 2; 1997, No. 950, § 1; 2001, No. 1603, § 47.

23-96-103. Construction — Applicability.

(a) This chapter shall be construed to effect the purpose under § 23-96-102.

(b) Nothing in this chapter shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

History. Acts 1989, No. 444, §§ 4, 14, 20; 1997, No. 950, § 1.

23-96-104. Definitions.

As used in this chapter:

(1) "Account" means any of the two (2) accounts created under § 23-96-109;

(2) "Association" means the Arkansas Life and Health Insurance Guaranty Association created under § 23-96-109;

(3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan;

(5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the Arkansas Life and Health Insurance Guaranty Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the Arkansas Life and Health Insurance Guaranty Association to member insurers;

(6) "Commissioner" means the Insurance Commissioner of this state;

(7) "Contractual obligations" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 23-96-107;

(8) "Covered policy" or "covered contract" means any policy or contract or portion of a policy or contract for which coverage is provided under § 23-96-107;

(9) "Extra-contractual claims" shall include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs;

(10) "Impaired insurer" means a member insurer which, after March 9, 1989, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(11) "Insolvent insurer" means a member insurer which, after March 9, 1989, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(12) "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under § 23-96-107, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(A) A hospital or medical service organization, whether profit or nonprofit;

(B) A health maintenance organization;

(C) A fraternal benefit society;

(D) A mandatory state pooling plan;

(E) A burial association;

(F) An insurance exchange;

(G) Prepaid funeral trusts;

(H) An organization which has a certificate or license limited to the issuance of charitable gift annuities; or

(I) Any entity similar to any of the above;

(13) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto;

(14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner", "contract owner", and "policy owner" do not include persons with a mere beneficial interest in a policy or contract;

(15)(A) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(B) It is the intent of the General Assembly that "person" shall include a claimant or beneficiary who is receiving annuity benefits as provided in § 11-9-210 and §§ 23-96-114(b) and 23-96-114(f);

(16) "Plan sponsor" means:

(A) The employer in the case of a benefit plan established or maintained by a single employer;

(B) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan;

(17)(A) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits.

(B)(i) "Premiums" does not include amounts or considerations received for any policies or contracts or for the portions of policies or contracts for which coverage is not provided under § 23-96-106, except that assessable premium shall not be reduced on account of § 23-96-106(a)(3), relating to interest limitations and § 23-96-114(a)(2), relating to limitations with respect to one (1) individual, one (1) participant, and one (1) contract owner.

(ii) Provided, "premiums" shall not include:

(a) Any premiums in excess of one million dollars ($1,000,000) on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code; or

(b) With respect to multiple nongroup policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars ($1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(18)(A) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Arkansas Life and Health Insurance Guaranty Association in its reasonable judgment by considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(iv) The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies composing a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors. However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(B) The principal place of business of a plan sponsor of a benefit plan described in subdivision (16)(C) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

(19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;

(20) "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Arkansas Life and Health Insurance Guaranty Association created by this chapter shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(21) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate;

(22) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

(23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, an accident and health, or an annuity policy or contract; and

(24)(A) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

(B) It is the intent of the General Assembly that an annuity contract as provided for in § 11-9-210, shall not be an "unallocated annuity contract".

History. Acts 1989, No. 444, § 5; 1991, No. 651, § 2; 1997, No. 950, § 1; 2001, No. 1603, §§ 48, 49; 2001, No. 1604, § 119; 2013, No. 456, § 1.

Amendments. The 2013 amendment deleted "whichever occurs first" at the end of the first sentence in (20).

U.S. Code. Sections 401(k), 403(b) and 457 of the United States Internal Revenue Code, referred to in this section, are codified as 26 U.S.C. §§ 401(k), 403(b) and 457, respectively.

23-96-105. Advertisement of association act in insurance sales — Notice to policy owners.

(a) No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the Arkansas Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter, except in conformity with the rules and regulations of the Insurance Commissioner. In adopting such rules and regulations, the commissioner, in consultation with the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association, shall take into consideration the following factors: the need of the public to have confidence in the financial soundness of insurance products offered for sale in this state, the financial integrity of member insurers doing business in this state, and the role of the association in serving as a safety net for policy owners, contract owners, insureds, and beneficiaries of impaired insurers or insolvent insurers in this state. Provided, however, that this section shall not apply to the association or any other entity which does not sell or solicit insurance.

(b)(1)(A) Within one hundred eighty (180) days of March 9, 1989, the association shall prepare a summary document describing the general purpose and current limitations of this chapter and complying with subsection (c) of this section.

(B) This document shall be submitted to the commissioner for approval.

(C) Sixty (60) days after receiving such approval, no insurer may deliver a policy or contract described in § 23-96-107(b) to a policy owner or contract owner unless the summary document is delivered to the policy owner or contract owner at the time of delivery of the policy or contract except if § 23-96-107(c) applies.

(2)(A) The document should also be available upon request by a policy owner.

(B) The distribution, delivery, or contents or interpretation of this document does not guarantee that either the policy or the contract or the owner thereof is covered in the event of the impairment or insolvency of a member insurer.

(C) The description document shall be revised by the association as amendments to this chapter may require.

(D) Failure to receive this document does not give the policy owner, contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

(c)(1) The document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face.

(2) The commissioner shall establish the form and content of the disclaimer.

(3) The disclaimer shall:

(A) State the name and address of the association and the State Insurance Department;

(B) Prominently warn the policy owner or contract owner that the association may not cover the policy or, if coverage is available, it will be subject to substantial limitations, exclusions, and conditioned on continued residence in this state;

(C) State the types of policies for which guaranty funds will provide coverage;

(D) State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(E) State that the policy owner or contract owner should not rely on coverage under the association when selecting an insurer;

(F) Explain rights available and procedures for filing a complaint of a violation of any provisions of this chapter; and

(G) Provide other information as directed by the commissioner including but not limited to, sources of information about financial conditions of insurers, provided that the information is not proprietary and is subject to disclosure under that state's public records law.

History. Acts 1989, No. 444, § 19; 1997, No. 950, § 1; 2001, No. 1603, §§ 50, 51.

23-96-106. Scope of chapter.

(a) This chapter shall not provide coverage for:

(1) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy owner or contract owner;

(2) A portion of a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(3) A policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor

determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four (4) years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four (4) years before the member insurer becomes an impaired insurer or insolvent insurer under this chapter, whichever is earlier; and

(B) On and after the date on which the Arkansas Life and Health Insurance Guaranty Association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, accident and health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(5) A portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any fees or allowances to any person, including the policy owner or contract owner, in connection with the service to or administration of such policy or contract;

(6) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

(7) An unallocated annuity contract issued to or in connection with a benefit plan protected under the Pension Benefit Guaranty Corporation regardless of whether the Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

(8) A portion of an unallocated annuity contract that is not owned by a benefit plan, directly or in trust, or a government lottery or issued to a collective investment trust or similar pooled fund offered by a bank or other financial institution;

(9) Any policy or contract written on the mutual assessment plan or stipulated premium plan prior to January 1, 1968, for which no statutory legal reserves are required;

(10) A portion of a policy or contract to the extent that the assessments required by § 23-96-115 with respect to the policy or contract are preempted by federal or state law;

(11) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(12) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustees, which in each case is not an affiliate of the member insurer;

(13) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy owner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision (a)(13), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; and

(14) A policy or contract providing any hospital, medical, prescription drug, or other healthcare benefits pursuant to Part C or Part D of 42 U.S.C. §§ 1395 — 1395kkk-1, commonly known as Medicare Part C and D, or any regulations issued pursuant thereto.

(b) The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired insurer or insolvent insurer other than this state.

History. Acts 1989, No. 444, §§ 3, 8; 1997, No. 950, § 1; 2001, No. 1603, § 52; 2001, No. 1604, § 120; 2013, No. 456, § 2.

Amendments. The 2013 amendment added (a)(13) and (a)(14).

U.S. Code. Section 514 of the Employee Retirement Income Security Act of 1974, referred to in this section, is codified as 29 U.S.C. § 1144.

23-96-107. Coverage.

(a) This chapter shall provide coverage for the policies and contracts specified in subsection (b) of this section to:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (a)(2) of this section;

(2) Persons who are owners of or certificate holders under such policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents, but only under all of the following conditions:

(i) The insurer that issued the policies or contracts is domiciled in this state;

(ii) The states in which the persons reside have associations similar to the Arkansas Life and Health Insurance Guaranty Association created by this chapter; and

(iii) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law;

(3) For unallocated annuity contracts specified in subsection (b) of this section, subdivisions (a)(1) and (2) of this section shall not apply, and except as provided in subdivisions (a)(5) and (6) of this section, this chapter shall provide coverage to:

(A) Persons who are the owners of the unallocated annuity contracts if the unallocated annutiy contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(B) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents;

(4) For structured settlement annuities specified in subsection (b) of this section, subdivisions (a)(1) and (2) of this section shall not apply, and except as provided in subdivisions (a)(5) and (6) of this section, this chapter shall provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(A) Is a resident, regardless of where the contract owner resides; or

(B) Is not a resident, but only under both of the following conditions:

(i)*(a)* The contract owner of the structured settlement annuity is a resident; or

(b) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state;

(c) The state in which the contract owner resides has an association similar to the Arkansas Life and Health Insurance Guaranty Association created by this chapter; and

(ii) Neither the payee, or beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;

(5) This chapter shall not provide coverage for:

(A) A person who is a payee, or beneficiary, of a contract owner resident of this state, if the payee, or beneficiary, is afforded any coverage by the association of another state; or

(B) A person covered in subdivision (a)(3) of this section if any coverage is provided by the association of another state to the person;

(6) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of the provision of this subdivision (a)(6) in situations where a person could be covered by the association of more than one (1) state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one (1) association.

(b) This chapter shall provide coverage to the persons specified in subsection (a) of this section for direct, nongroup life, accident and health, or annuity policies or contracts for certificates under direct group policies and contracts, and for supplemental contracts to any of these, and for unallocated annuity contracts, in each case issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts.

(c)(1) No insurer or agent may deliver a policy or contract described in subsection (b) of this section and excluded under § 23-96-106(a)(1) from coverage under this chapter unless the insurer or agent, prior to or at the time of delivery, gives the policy holder or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Arkansas Life and Health Insurance Guaranty Association.

(2) The Insurance Commissioner shall by rule specify the form and content of the notice.

History. Acts 1989, No. 444, §§ 3, 19; 1997, No. 950, § 1; 2001, No. 1603, §§ 53, 54; 2013, No. 456, § 3.

Amendments. The 2013 amendment, in (b), deleted "and supplemental contracts to any of these" preceding "for certificates," inserted "and for supplemental contracts to any of these" preceding "and for unallocated," and inserted "in each case" in the first sentence.

23-96-108. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the Arkansas Life and Health Insurance Guaranty Association or its agents or employees, members of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association, or the Insurance Commissioner or his or her representatives for any action or omission by them in the performance of their powers and duties under this chapter. Such immunity shall extend to the participation in any organization of one (1) or more other state associations of similar purposes and to any such organization and its agents or employees.

History. Acts 1989, No. 444, § 17; 1997, No. 950, § 1.

23-96-109. Creation of the association — Examination — Annual report — Tax exemption — Board of directors.

(a)(1) There is created a nonprofit legal entity to be known as the "Arkansas Life and Health Insurance Guaranty Association". All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under § 23-96-116 and shall exercise its powers through a board of directors established under subsection (b) of this section.

(2) The association shall come under the immediate supervision of the Insurance Commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association.

(3) The association shall be subject to examination and regulation by the commissioner.

(4) The board shall submit to the commissioner each year, not later than one hundred twenty (120) days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. Upon request of a member insurer, the association shall provide the member insurer with a copy of the report.

(5) For purposes of administration and assessment, the association shall maintain two (2) accounts:

(A) The life insurance and annuity account, which includes the following subaccounts:

(i) Life insurance account;

(ii) Annuity account, which shall include annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code, but shall otherwise exclude unallocated annuities; and

(iii) Unallocated annuity account, which shall exclude contracts owned by a governmental retirement benefit plan, or its trustee, established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code;

(B) The accident and health insurance account.

(6) The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

(b)(1)(A) The board shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation.

(B) The members of the board shall be selected by member insurers subject to the approval of the commissioner.

(C) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board, but members of the board shall not otherwise be compensated by the association for their services.

History. Acts 1989, No. 444, §§ 6, 7, 15, 16; 1997, No. 950, § 1; 2001, No. 1603, §§ 55, 56.

Publisher's Notes. Acts 1989, No. 444, § 7, provided, in part, that the commissioner may appoint the initial members of the association following the guidelines in subdivision (b)(2) of this section.

U.S. Code. Sections 401(k), 403(b) and 457 of the United States Internal Revenue Code, referred to in this section, are codified as 26 U.S.C. §§ 401(k), 403(b), and 457, respectively.

23-96-110. Powers and duties of association.

(a) In addition to the rights and powers elsewhere in this chapter, the Arkansas Life and Health Insurance Guaranty Association may:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under § 23-96-115 and to settle claims or potential claims against it;

(3) Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the Arkansas Life and Health Insurance Guaranty Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the Arkansas Life and Health Insurance Guaranty Association and to perform such other functions as become necessary or proper under this chapter;

(5) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(6) Exercise, for the purpose of this chapter and to the extent approved by the Insurance Commissioner, the powers of a domestic life or accident and health insurer, but in no case may the Arkansas Life and Health Insurance Guaranty Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;

(7) Organize itself as a corporation or in other legal form permitted by the laws of this state;

(8) Request information from a person seeking coverage from the Arkansas Life and Health Insurance Guaranty Association in order to aid the Arkansas Life and Health Insurance Guaranty Association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(9) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(b) The Arkansas Life and Health Insurance Guaranty Association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired insurer or insolvent insurer.

(c)(1) The Arkansas Life and Health Insurance Guaranty Association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired insurer or insolvent insurer concerning which the Arkansas Life and Health Insurance Guaranty Association is or may become obligated under this chapter or with jurisdiction over any person or property against whom the Arkansas Life and Health Insurance Guaranty Association may have rights through subrogation or otherwise. Provided, at its option, the Arkansas Life and Health Insurance Guaranty Association may appear solely for the purpose of receiving copies of all pleadings and notices and attending hearings without otherwise becoming a party to the proceeding. Such standing shall extend to all matters germane to the powers and duties of the Arkansas Life and Health Insurance Guaranty Association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired insurer or insolvent insurer and the determination of the policies or contracts and contractual obligations.

(2) The Arkansas Life and Health Insurance Guaranty Association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired insurer or insolvent insurer for which the Arkansas Life and Health Insurance Guaranty Association is or may become obligated or with jurisdiction over any person or property against whom the Arkansas Life and Health Insurance Guaranty Association may have rights through subrogation or otherwise.

(d) The Arkansas Life and Health Insurance Guaranty Association may join an organization of one (1) or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the Arkansas Life and Health Insurance Guaranty Association.

(e)(1)(A) Records shall be kept of all meetings of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association to discuss the activities of the Arkansas Life and Health Insurance Guaranty Association in carrying out its powers and duties under §§ 23-96-111 — 23-96-114 and 23-96-120.

(B) The records of the Arkansas Life and Health Insurance Guaranty Association with respect to an impaired insurer or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction.

(2) Nothing in this subsection shall limit the duty of the Arkansas Life and Health Insurance Guaranty Association to render a report of its activities under § 23-96-109(a)(4).

(f)(1)(A) At any time within one hundred eighty (180) days of the date of the order of liquidation, the Arkansas Life and Health Insurance Guaranty Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, in each case under any one (1) or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Arkansas Life and Health Insurance Guaranty Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Arkansas Life and Health Insurance Guaranty Association or the National Organization of Life and Health Insurance Guaranty Associations on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(B) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Arkansas Life and Health Insurance Guaranty Association or to the National Organization of Life and Health Insurance Guaranty Associations on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(C) The following subdivisions (f)(1)(C)(i)-(iv) shall apply to reinsurance contracts so assumed by the Arkansas Life and Health Insurance Guaranty Association:

(i) The Arkansas Life and Health Insurance Guaranty Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association. The Arkansas Life and Health Insurance Guaranty Association may charge policies or annuities covered in part by the Arkansas Life and Health Insurance Guaranty Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Arkansas Life and Health Insurance Guaranty Association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The Arkansas Life and Health Insurance Guaranty Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, provided that, upon receipt of any such amounts, the Arkansas Life and Health Insurance Guaranty Association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(a) The amount received by the Arkansas Life and Health Insurance Guaranty Association; and

(b) The excess of the amount received by the Arkansas Life and Health Insurance Guaranty Association over the amount equal to the benefits paid by the Arkansas Life and Health Insurance Guaranty Association on account of the policy or annuity less the retention of the insurer applicable to the loss or event;

(iii) Within thirty (30) days following the Arkansas Life and Health Insurance Guaranty Association's election, the election date, the Arkansas Life and Health Insurance Guaranty Association and each reinsurer under contracts assumed by the Arkansas Life and Health Insurance Guaranty Association shall calculate the net balance due to or from the Arkansas Life and Health Insurance Guaranty Association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Arkansas Life

and Health Insurance Guaranty Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Arkansas Life and Health Insurance Guaranty Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Arkansas Life and Health Insurance Guaranty Association pursuant to subdivision (f)(1)(C)(ii) of this section, the receiver shall remit the same to the Arkansas Life and Health Insurance Guaranty Association as promptly as practicable; and

(iv) If the Arkansas Life and Health Insurance Guaranty Association or receiver, on the Arkansas Life and Health Insurance Guaranty Association's behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Arkansas Life and Health Insurance Guaranty Association, against amounts due the Arkansas Life and Health Insurance Guaranty Association.

(2)(A) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation:

(i) Neither the Arkansas Life and Health Insurance Guaranty Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Arkansas Life and Health Insurance Guaranty Association has the right to assume under subdivision (f)(1) of this section, whether for periods prior to or after the date of the order of liquidation; and

(ii) The reinsurer, the receiver, and the Arkansas Life and Health Insurance Guaranty Association shall, to the extent practicable, provide each other data and records reasonably requested.

(B) Provided that once the Arkansas Life and Health Insurance Guaranty Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (f)(1) of this section.

(3) If the Arkansas Life and Health Insurance Guaranty Association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (f)(1) of this section, the Arkansas Life and Health Insurance Guaranty Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies or annuities or covered obligations with respect thereto are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Arkansas Life and Health Insurance Guaranty Association, in the case of contracts assumed under subdivision (f)(1) of this section, subject to the following:

(A) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(B) The obligations described in subdivision (f)(1) of this section shall no longer apply with respect to matters arising after the effective date of the transfer; and

(C) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty (30) days prior to the effective date of the transfer.

(5) The provisions of this subsection shall supersede the provisions of any law of this state or of any affected reinsurance agreement or agreements that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement or agreements with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions.

(6) Except as otherwise expressly provided above, nothing herein shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing herein shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing herein shall give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the Arkansas Life and Health Insurance Guaranty Association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

(g) The Board of Directors of the Arkansas Life and Health Insurance Guaranty Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Arkansas Life and Health Insurance Guaranty Association is to provide the benefits of this chapter in an economical and efficient manner and may provide additional or alternative coverages and benefits in appropriate situations.

(h) Where the Arkansas Life and Health Insurance Guaranty Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills

the Arkansas Life and Health Insurance Guaranty Association's obligations under this chapter, the person shall not be entitled to benefits from the Arkansas Life and Health Insurance Guaranty Association in addition to or other than those provided under the plan or arrangement.

(i) Venue in a suit against the Arkansas Life and Health Insurance Guaranty Association arising under this chapter shall be in Pulaski County. The Arkansas Life and Health Insurance Guaranty Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

History. Acts 1989, No. 444, §§ 8, 14; 1997, No. 950, § 1; 2001, No. 1603, § 57; 2001, No. 1604, § 121; 2013, No. 456, § 4.

Amendments. The 2013 amendment rewrote (f); redesignated former (h) and (i) as (f)(5) and (f)(6), and redesignated the remaining subdivisions accordingly; and added the last three sentences in (f)(6).

23-96-111. Impaired insurers.

If a member insurer is an impaired insurer, the Arkansas Life and Health Insurance Guaranty Association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the Insurance Commissioner:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(2) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1) of this section.

History. Acts 1989, No. 444, §§ 8, 11; 1997, No. 950, § 1.

23-96-112. Insolvent insurers.

(a) If a member insurer is an insolvent insurer, the Arkansas Life and Health Insurance Guaranty Association shall, in its discretion, either:

(1)(A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(C) Provide such moneys, pledges, loans, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or

(2) Provide benefits and coverages in accordance with § 23-96-113.

(b) All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding

based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History. Acts 1989, No. 444, §§ 8, 18; 1997, No. 950, § 1.

23-96-113. Authority of association when proceeding under § 23-96-111 or § 23-96-112.

(a)(1) When proceeding under § 23-96-111 or § 23-96-112(a)(2), the Arkansas Life and Health Insurance Guaranty Association shall:

(A) With respect to life and accident and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the association becomes obligated with respect to such policies and contracts;

(ii) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under such policies or contracts or one (1) year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to such policies or contracts;

(B) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies and contracts, or group policy owners with respect to group policies and contracts thirty (30) days' notice of the termination, pursuant to this subdivision (a)(1), of the benefits provided;

(C) With respect to nongroup life and accident and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (a)(2)(A) of this section, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provisions of the policy or annuity or had a right only to make changes in premium by class.

(2)(A) In providing the substitute coverage required under subdivision (a)(1)(C) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(B) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(C) The association may reinsure any alternative or reissued policy.

(3)(A) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(b) When proceeding under § 23-96-111 or § 23-96-112(a) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with § 23-96-106(a)(3).

(c) In carrying out its duties under §§ 23-96-111 and 23-96-112(a), the association may:

(1) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest;

(2) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired insurer or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge

imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(3) A deposit in this state, held pursuant to law or required by the Insurance Cmmissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to § 23-68-115, shall be promptly paid to the association. The association (i) shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and (ii) shall remit to the domiciliary receiver the amount so paid to the association and retained pursuant to clause (i). Any amount so paid to the association and retained by it pursuant to clause (i) shall be treated as a distribution of estate assets pursuant to § 23-68-126 or similar provision of the state of domicile of the impaired insurer or insolvent insurer.

(d) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under § 23-96-111 or § 23-96-112(a), the association, subject to approval of the receivership court, may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for (i) a fixed rate or (ii) payments of dividends with minimum guarantees or (iii) a different method for calculating interest or changes in value;

(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

History. Acts 1989, No. 444, § 8; 1997, No. 950, § 1; 2001, No. 1603, §§ 58, 59; 2001, No. 1604, § 122.

23-96-114. Liability for benefits — Assignment or subrogation of rights.

(a) The benefits that the Arkansas Life and Health Insurance Guaranty Association may become obligated to cover shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired insurer or insolvent insurer; or

(2)(A) With respect to any one (1) life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars ($300,000) in life insurance death benefits or net cash surrender and net cash withdrawal values for life insurance;

(ii) Five hundred thousand dollars ($500,000) in accident and health insurance benefits, including any net cash surrender and net cash withdrawal values, provided coverage for disability insurance benefits and long term care insurance benefits shall not exceed three hundred thousand dollars ($300,000);

(iii) Three hundred thousand dollars ($300,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(B) With respect to each individual participating in a governmental retirement benefit plan established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate three hundred thousand dollars ($300,000) in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(C) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, three hundred thousand dollars ($300,000) in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any.

(b)(1) Provided, however, that in no event shall the Arkansas Life and Health Insurance Guaranty Association be obligated to cover more than (i) three hundred thousand dollars ($300,000) in benefits in the aggregate with respect to any one (1) life under § 23-96-106, § 23-96-107, and this section except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under subdivision (a)(2)(A)(ii) of this section, in which case the aggregate liability of the Arkansas Life and Health Insurance Guaranty Association shall not exceed five hundred thousand dollars ($500,000) with respect to any one (1) individual, or (ii) with respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than one million dollars ($1,000,000) in benefits, regardless of the number of policies and contracts held by the owner;

(2) With respect to either (i) one (1) contract owner provided coverage under § 23-96-107(b)(2); or (ii) one (1) plan sponsor whose plans own directly or in trust one (1) or more unallocated annuity contracts not included in subdivision (a)(2)(B) of this section, one million dollars ($1,000,000) in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one (1) or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two (2) or more plan sponsors, coverage shall be afforded by the Arkansas Life and Health Insurance Guaranty Association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in no event shall the Arkansas Life and Health Insurance Guaranty Association be obligated to cover more than one million dollars ($1,000,000) in benefits with respect to all of these unallocated contracts.

(3) The limitations set forth in this subsection are limitations on the benefits for which the Arkansas Life and Health Insurance Guaranty Association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired insurer or insolvent insurer attributable to covered policies. The costs of the Arkansas Life and Health Insurance Guaranty Association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the Arkansas Life and Health Insurance Guaranty Association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under § 23-96-111, the Arkansas Life and Health Insurance Guaranty Association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent insurer or impaired insurer under a covered policy or covered contract that do not materially affect the economic values or economic benefits of the covered policy or covered contract.

(c)(1) Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or covered contract to the Arkansas Life and Health Insurance Guaranty Association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The Arkansas Life and Health Insurance Guaranty Association may require an assignment to it of such rights and cause of action by any payee, policy owner or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.

(2) The subrogation rights of the Arkansas Life and Health Insurance Guaranty Association under this subsection shall have the same

priority against the assets of the impaired insurer or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(3) In addition to subdivisions (c)(1) and (2) of this section, the Arkansas Life and Health Insurance Guaranty Association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired insurer or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to such policy or contracts.

(4) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the Arkansas Life and Health Insurance Guaranty Association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the Arkansas Life and Health Insurance Guaranty Association.

(5) If the Arkansas Life and Health Insurance Guaranty Association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the Arkansas Life and Health Insurance Guaranty Association has rights as described in subdivisions (c)(1)-(4) of this section, the person shall pay to the Arkansas Life and Health Insurance Guaranty Association the portion of the recovery attributable to the policies, or portion thereof, covered by the Arkansas Life and Health Insurance Guaranty Association.

(d)(1) For the purpose of carrying out its obligations under this chapter, the Arkansas Life and Health Insurance Guaranty Association shall be deemed to be a creditor of the impaired insurer or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Arkansas Life and Health Insurance Guaranty Association is entitled as subrogee pursuant to subsection (c) of this section. Assets of the impaired insurer or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer or insolvent insurer as required by this chapter.

(2) "Assets attributable to covered policies", as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired insurer or insolvent insurer.

(e) As a creditor of the impaired insurer or insolvent insurer as established in subsection (d) of this section and consistent with § 23-68-126, the Arkansas Life and Health Insurance Guaranty Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available, to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of an

insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Arkansas Life and Health Insurance Guaranty Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(f) It is the intent of the General Assembly that the coverage provided through the Arkansas Life and Health Insurance Guaranty Association for any annuity contract executed pursuant to § 11-9-210 shall be the lesser of the contractual obligations of the insurer or one hundred thousand dollars ($100,000) in the present value of annuity benefits including net cash surrender and net cash withdrawal values as provided in subsection (a) of this section.

(g) It is the intent of the General Assembly that coverage provided by the Arkansas Life and Health Insurance Guaranty Association for annuity contracts executed pursuant to § 11-9-210 shall not be affected by the fact that the annuity payments are sent to the Workers' Compensation Commission for distribution to the claimants and beneficiaries, and that any funds provided by the Arkansas Life and Health Insurance Guaranty Association for payment to claimants or beneficiaries for whom annuity contracts are executed under § 11-9-210 shall be sent to the commission for distribution to claimants or beneficiaries.

History. Acts 1989, No. 444, §§ 3, 8, 14; 1991, No. 651, § 2; 1997, No. 950, § 1; 2001, No. 1603, §§ 60-62; 2001, No. 1604, § 123; 2013, No. 456, § 5.

Amendments. The 2013 amendment rewrote (a)(2)(A)(ii), (a)(2)(C), and (b).

U.S. Code. Sections 401(k), 403(b), and 457 of the Internal Revenue Code referred to in this section are codified as 26 U.S.C. §§ 401(k), 403(b), and 457, respectively.

23-96-115. Assessments — Tax credits.

(a)(1) For the purpose of providing the funds necessary to carry out the powers and duties of the Arkansas Life and Health Insurance Guaranty Association, the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary.

(2) Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at ten percent (10%) per annum on and after the due date.

(b) There shall be two (2) classes of assessments, as follows:

(1) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired insurer or insolvent insurer;

(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under § 23-96-106(b), §§ 23-96-110 — 23-96-114, and 23-96-120 with regard to an impaired insurer or an insolvent insurer.

(c)(1)(A) The amount of a Class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board of directors may provide that it be credited against future Class B assessments. The total of all non-pro rata assessments shall not exceed one hundred fifty dollars ($150) per member insurer in any one (1) calendar year.

(B) The amount of a Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became insolvent, or in the case of an assessment with respect to an impaired insurer, the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired insurer or insolvent insurer shall not be authorized or called until necessary to implement the purpose of this chapter.

(d) Classification of assessments under subsection (b) of this section and computation of assessments under subsection (c) of this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty (180) days after the assessment is authorized.

(e) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(f)(1)(A) Subject to the provisions of subdivision (f)(1)(B) of this section, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the accident and health

account shall not in any one (1) calendar year exceed two percent (2%) of such insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three (3) calendar years preceding the year in which the insurer became an impaired insurer or insolvent insurer.

(B) If two (2) or more assessments are authorized in one (1) calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (f)(1)(A) of this section shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

(C) If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one (1) or more impaired insurers or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If the maximum assessment for any subaccount of the life and annuity account in any one (1) year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subdivision (c)(2) of this section, the board shall assess the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subdivision (f)(1) of this section.

(g) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses claims.

(h) It shall be proper for any member insurer, in determining its premium rates and policyholder dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(i)(1) The association shall issue to each insurer paying an assessment under this chapter, other than Class A assessment, a certificate of contribution, in a form prescribed by the Insurance Commissioner, for the amount of the assessment so paid.

(2) All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue.

(3) A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(j)(1)(A) A member insurer may offset against its premium tax liability to this state an assessment described in subsection (i) of this section to the extent of twenty percent (20%) of the amount of the assessment for each of the five (5) calendar years following the year in which the assessment was paid.

(B) In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(2)(A) Any sums which are acquired by refund, pursuant to subsection (g) of this section, from the association by member insurers and which have theretofore been offset against premium taxes as provided in subdivision (j)(1)(A) of this section, shall be paid by such insurers to this state in such manner as the tax authorities may require.

(B) The association shall notify the commissioner that such refunds have been made.

History. Acts 1989, No. 444, §§ 9, 13; 1997, No. 950, § 1; 2001, No. 1603, § 63.

23-96-116. Plan of operation.

(a)(1) The Arkansas Life and Health Insurance Guaranty Association shall submit to the Insurance Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Arkansas Life and Health Insurance Guaranty Association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he or she has not disapproved it within thirty (30) days.

(2) If the Arkansas Life and Health Insurance Guaranty Association fails to submit a suitable plan of operation within one hundred twenty (120) days following March 9, 1989, or if at any time thereafter the Arkansas Life and Health Insurance Guaranty Association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the Arkansas Life and Health Insurance Guaranty Association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

(1) Establish procedures for handling the assets of the Arkansas Life and Health Insurance Guaranty Association;

(2) Establish the amount and method of reimbursing members of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association under § 23-96-109(b);

(3) Establish regular places and times for meetings, including telephone conference calls of the board;

(4) Establish procedures for records to be kept of all financial transactions of the Arkansas Life and Health Insurance Guaranty Association, its agents, and the board;

(5) Establish the procedures whereby selections for the board will be made and submitted to the commissioner;

(6) Establish any additional procedures for assessments under § 23-96-115;

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the Arkansas Life and Health Insurance Guaranty Association.

(d)(1) The plan of operation may provide that any or all powers and duties of the Arkansas Life and Health Insurance Guaranty Association, except those under § 23-96-114(c)(3) and § 23-96-115, may be delegated to the State Insurance Department or to a corporation, association, organization, or other entity which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, organization, or other entity, including, as applicable, the department, shall be reimbursed for any payments made on behalf of the Arkansas Life and Health Insurance Guaranty Association and shall be paid for its performance of any function of the Arkansas Life and Health Insurance Guaranty Association.

(2) A delegation under this subsection shall take effect only with the approval of both the board and the commissioner, and may be made only to a corporation, association, organization or other entity, including the department, which extends protection not substantially less favorable and effective than that provided by this chapter.

History. Acts 1989, No. 444, § 10; 1997, No. 950, § 1.

23-96-117. Detection and prevention of insolvencies or impairments.

To aid in the detection and prevention of insurer insolvencies or impairments:

(1) It shall be the duty of the Insurance Commissioner:

(A)(i) To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when he or she takes any of the following actions against a member insurer:

(a) Revocation of license;

(b) Suspension of license; or

(c) Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw

from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors.

(ii) Such notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs;

(B)(i) To report to the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association when he or she has taken any of the actions set forth in subdivision (1)(A) of this section or has received a report from any other commissioner indicating that any such action has been taken in another state.

(ii) Such report to the board shall contain all significant details of the action taken or the report received from another commissioner;

(C) To report to the board when he or she has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be an impaired insurer or insolvent insurer;

(D)(i) To furnish to the board the National Association of Insurance Commissioners' Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section.

(ii) The report and the information contained therein shall be kept confidential by the board until such time as made public by the Insurance Commissioner or other lawful authority;

(2) The Insurance Commissioner may seek the advice and recommendations of the board concerning any matter affecting his or her duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state;

(3)(A) The board may, upon majority vote, make reports and recommendations to the Insurance Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state.

(B) Such reports and recommendations shall not be considered public documents;

(4) The board may, upon majority vote, notify the Insurance Commissioner of any information indicating any member insurer may be an impaired insurer or insolvent insurer;

(5) The board may, upon majority vote, make recommendations to the Insurance Commissioner for the detection and prevention of insurer insolvencies.

History. Acts 1989, No. 444, § 12; 1997, No. 950, § 1.

23-96-118. Duties and powers of commissioner.

(a) In addition to the duties and powers enumerated elsewhere in this chapter:

(1) The Insurance Commissioner shall:

(A) Upon request of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association, provide the Arkansas Life and Health Insurance Guaranty Association with a statement of the premiums in this and any other appropriate states for each member insurer;

(B)(i) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time.

(ii) Notice to the impaired insurer shall constitute notice to its shareholders, if any.

(iii) The failure of the insurer to promptly comply with such a demand shall not excuse the association from the performance of its powers and duties under this chapter;

(C) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator;

(2)(A) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation.

(B) As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100) per month.

(b) A final action of the board or the association may be appealed to the commissioner by any member insurer if the appeal is taken within sixty (60) days of its receipt of notice of the final action's being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to actions or orders of the commissioner.

(c) If the association fails to act within a reasonable period of time as provided in § 23-96-112(a) and §§ 23-96-113 and 23-96-120, the commissioner shall have the powers and duties of the association under this chapter with respect to impaired insurers or insolvent insurers.

History. Acts 1989, No. 444, §§ 8, 11; 1997, No. 950, § 1.

23-96-119. Distributions of ownership rights.

(a)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Arkansas Life and Health Insurance Guaranty Association, the shareholders, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policy owners of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired insurer or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under §§ 23-96-111 — 23-96-114 and 23-96-120 with respect to such an insurer have been fully recovered by the association.

(b)(1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five (5) years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (b)(2)-(4) of this section.

(2) No such distribution shall be recoverable if the insurer shows that, when paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3)(A) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he or she received.

(B) Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately.

(C) If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under subdivision (b)(3) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History. Acts 1989, No. 444, § 14; 1997, No. 950, § 1.

23-96-120. Payment of premiums.

(a) Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the Arkansas Life and Health Insurance Guaranty Association's obligations under such policy or coverage under this chapter with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(b) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy owners or contract owners arising after the entry of the order.

History. Acts 1989, No. 444, § 8; 1997, No. 950, § 1.

23-96-121. Reissuance of terminated coverage.

(a) If the Arkansas Life and Health Insurance Guaranty Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary commissioner and the receivership court.

(b) The association's obligations with respect to coverage under any policy of the impaired insurer or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association.

History. Acts 1989, No. 444, § 8; 1997, No. 950, § 1.

CHAPTER 97

LONG-TERM CARE INSURANCE

SUBCHAPTER.

1. General Provisions. [Reserved.]
2. Long-Term Care Insurance Act. [Repealed.]
3. Long-Term Care Insurance Act of 2005.

Subchapter 1 — General Provisions.

[Reserved]

Subchapter 2 — Long-Term Care Insurance Act

SECTION.
23-97-201 — 23-97-213. [Repealed.]

23-97-201 — 23-97-213. [Repealed.]

A.C.R.C. Notes. Pursuant to Acts 2005, No. 1962, § 119, the repeal of § 23-97-213 by Acts 2005, No. 1697, § 32 supersedes the amendment of § 23-97-213 by Acts 2005, No. 1962, § 111.

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 1697, § 32. The subchapter was derived from the following sources:

23-97-201. Acts 1989, No. 642, § 3.

23-97-202. Acts 1989, No. 642, § 1.

23-97-203. Acts 1989, No. 642, § 4; 1997, No. 517, §§ 1, 2; 2001, No. 1603, § 64.

23-97-204. Acts 1989, No. 642, § 2; 1997, No. 517, § 3.

23-97-205. Acts 1989, No. 642, § 6.

23-97-206. Acts 1989, No. 642, § 7.

23-97-207. Acts 1989, No. 642, § 5.

23-97-208. Acts 1989, No. 642, § 6; 1997, No. 517, § 4.

23-97-209. Acts 1989, No. 642, § 6.

23-97-210. Acts 1989, No. 642, § 6; 1993, No. 901, § 43.

23-97-211. Acts 1989, No. 642, § 6; 1997, No. 517, § 5.

23-97-212. Acts 1989, No. 642, § 6; 1997, No. 517, § 6.

23-97-213. Acts 1989, No. 642, § 6; 1997, No. 517, § 7.

Subchapter 3 — Long-Term Care Insurance Act of 2005

SECTION.
23-97-301. Short title.
23-97-302. Purpose.
23-97-303. Scope.
23-97-304. Definitions.
23-97-305. Requirements for associations.
23-97-306. Extraterritorial jurisdiction — Group long-term care insurance.
23-97-307. Disclosure and performance standards for long-term care insurance.
23-97-308. Preexisting condition.
23-97-309. Prior hospitalization or institutionalization.
23-97-310. Loss ratio standards.
23-97-311. Right to return — Free look.
23-97-312. Outline of coverage.
23-97-313. Certificates.
23-97-314. Delivery of policy and summary — Disclosures.
23-97-315. Acceleration of death benefit.
23-97-316. Denial of claims.
23-97-317. Offer of long-term care or nursing home insurance.
23-97-318. Incontestability period.
23-97-319. Nonforfeiture benefits.
23-97-320. Authority to promulgate regulations.
23-97-321. Penalties.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage

will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-97-301. Short title.

This subchapter shall be known and may be cited as the "Long-Term Care Insurance Act of 2005".

History. Acts 2005, No. 1697, § 31.

23-97-302. Purpose.

The purpose of this subchapter is to:

(1) Promote the public interest;

(2) Promote the availability of long-term care insurance policies;

(3) Protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;

(4) Establish standards for long-term care insurance;

(5) Facilitate public understanding and comparison of long-term care insurance policies; and

(6) Facilitate flexibility and innovation in the development of long-term care insurance coverage.

History. Acts 2005, No. 1697, § 31.

23-97-303. Scope.

(a) The requirements of this subchapter apply to policies delivered or issued for delivery in this state on or after August 12, 2005.

(b) Except as provided in subsection (c) of this section, this subchapter is not intended to supersede the obligations to comply with other applicable insurance laws that do not conflict with this subchapter.

(c) Laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.

History. Acts 2005, No. 1697, § 31.

23-97-304. Definitions.

As used in this subchapter:

(1) "Applicant" means:

(A) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(B) In the case of a group long-term care insurance policy, the proposed certificate holder;

(2) "Association" means a professional, trade, or occupational association or associations, if the association:

(A) Is composed entirely of individuals that are or were actively engaged in the same profession, trade, or occupation; and

(B) Has been maintained in good faith for purposes other than obtaining insurance;

(3) "Certificate" means any certificate issued under a group long-term care insurance policy delivered or issued for delivery in this state;

(4) "Commissioner" means the Insurance Commissioner;

(5) "Federally tax-qualified long-term care insurance contract" means:

(A) An individual or group insurance contract that meets the following requirements of section 7702B(b) of the Internal Revenue Code of 1986:

(i)*(a)* The only insurance protection provided under the contract is coverage of qualified long-term care services.

(b) A contract satisfies the requirements of this subdivision (5)(A)(i) even though payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(ii)*(a)* The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses:

(1) Are reimbursable under Title XVIII of the Social Security Act; or

(2) Would be reimbursable but for the application of a deductible or coinsurance amount.

(b) The requirements of this subdivision (5)(A)(ii) do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor.

(c) A contract satisfies the requirements of this subdivision (5)(A)(ii) even though payments are made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(iii) The contract is guaranteed renewable under section 7702B(b)(1)(C) of the Internal Revenue Code of 1986;

(iv) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed, except as provided in subdivision (5)(A)(v) of this section;

(v) All refunds of premiums, policyholder dividends, or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund in the event of the death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(vi) The contract meets the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code of 1986; or

(B) The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of sections 7702B(b) and 7702B(e) of the Internal Revenue Code of 1986;

(6) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued for the benefit of its current, former, or retired employees or members to one (1) or more:

(A) Employers, labor organizations, associations, or a trust or to the trustees of a fund established by one (1) or more employers or labor organizations; or

(B) Any other group if the commissioner finds that the issuance of the group policy:

(i) Is not contrary to the best interest of the public;

(ii) Results in economies of acquisition or administration; and

(iii) Results in benefits that are reasonable in relation to the premiums charged;

(7)(A) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services:

(i) For not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis; and

(ii) Provided in a setting other than an acute care unit of a hospital.

(B) "Long-term care insurance" includes, but is not limited to:

(i) Group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care insurance;

(ii) A policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity; and

(iii) Qualified long-term care insurance contracts.

(C) Long-term care insurance may be issued by:

(i) Insurers;

(ii) Fraternal benefit societies;

(iii) Nonprofit health, hospital, and medical service corporations;

(iv) Prepaid health plans;

(v) Health maintenance organizations; or

(vi) Any similar organization to the extent that the organization is otherwise authorized to issue life or health insurance.

(D) "Long-term care insurance" shall not include any insurance policy that is offered primarily to provide:

(i) Basic Medicare supplement coverage;

(ii) Basic hospital expense coverage;

(iii) Basic medical-surgical expense coverage;

(iv) Hospital confinement indemnity coverage;

(v) Major medical expense coverage;

(vi) Disability income or related asset-protection coverage;

(vii) Accident-only coverage;

(viii) Specified disease or specified accident coverage; or

(ix) Limited benefit health coverage.

(E) "Long-term care insurance" does not include life insurance policies:

(i) That accelerate the death benefit specifically for:

(a) One (1) or more of the qualifying events of terminal illness; or

(b) Medical conditions requiring extraordinary medical intervention or permanent institutional confinement;

(ii) That provide the option of a lump-sum payment for those benefits; and

(iii) When neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(F) Notwithstanding any other provision of this subchapter, any product advertised, marketed, or offered as long-term care insurance is subject to the provisions of this subchapter;

(8) "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by:

(A) An insurer;

(B) A fraternal benefit society;

(C) A nonprofit health, hospital, medical service corporation, or hospital medical service corporation;

(D) A prepaid health plan;

(E) A health maintenance organization; or

(F) Any similar organization; and

(9) "Qualified long-term care insurance contract" means the same as "federally tax-qualified long-term care insurance contract".

History. Acts 2005, No. 1697, § 31; 2007, No. 496, § 20; 2007, No. 827, § 188.

A.C.R.C. Notes. Acts 2007, No. 496, § 19, provided: "The purpose of sections 20 and 21 of this act is to correct references to the Internal Revenue Code in the Long-Term Care Insurance Act of 2005, § 23-97-301 et seq., that may act to restrict the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the Internal Revenue Code of 1986, as it existed on January 1, 2004. It is not the intent of the General Assembly to limit the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the Internal Revenue Code of 1986, as it existed on January 1, 2004."

Pursuant to Acts 2007, No. 827, § 240, the amendment of § 23-97-304(5) by Acts 2007, No. 496, § 20 supersedes the amendment of § 23-97-304(5) by Acts 2007, No. 827, § 188.

U.S. Code. Section 7702B(b), (b)(1)(C), (e) and (g) of the Internal Revenue Code of 1986, referred to in (5), are codified as 26 U.S.C. §§ 7702B(b), (b)(1)(C), (e) and (g), respectively.

Title XVIII of the Social Security Act, referred to in (5), is codified as 42 U.S.C. § 1395 et seq.

23-97-305. Requirements for associations.

(a) Prior to advertising, marketing, or offering a policy within this state, an association or the insurer of the association shall file evidence with the Insurance Commissioner that the association has:

(1) A minimum of one hundred (100) persons;

(2) Been organized and maintained in good faith for purposes other than that of obtaining insurance;

(3) Been in active existence for at least one (1) year; and

(4) Had a constitution and bylaws providing that:

(A) The association holds regular meetings not less than annually to further purposes of the members;

(B) Except for credit unions, the association collects dues or solicits contributions from members; and

(C) The members have voting privileges and representation on the governing board and committees.

(b) Thirty (30) days after the filing, the association or associations will be deemed to satisfy the organizational requirements unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

History. Acts 2005, No. 1697, § 31.

23-97-306. Extraterritorial jurisdiction — Group long-term care insurance.

No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state determines that the definition of "group long-term care insurance" under § 23-97-304 has been met.

History. Acts 2005, No. 1697, § 31.

23-97-307. Disclosure and performance standards for long-term care insurance.

(a) The Insurance Commissioner may adopt regulations for long-term care insurance that include, but are not limited to, standards for full and fair disclosure addressing:

(1) The manner, content, and required disclosures for the sale of long-term care insurance policies;

(2) Terms of renewability;

(3) Initial and subsequent conditions of eligibility;

(4) Nonduplication of coverage provisions;

(5) Coverage of dependents;

(6) Preexisting conditions;

(7) Termination of insurance;

(8) Continuation or conversion of coverage;

(9) Probationary periods;

(10) Limitations, exceptions, reductions, and elimination periods;

(11) Requirements for replacement;

(12) Recurrent conditions; and

(13) Definitions of terms.

(b) No long-term care insurance policy shall:

(1) Be cancelled, not renewed, or otherwise terminated because of age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form of coverage within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care within a facility than coverage for lower levels of care.

History. Acts 2005, No. 1697, § 31.

23-97-308. Preexisting condition.

(a) No long-term care insurance policy or certificate other than a policy or certificate issued to a group approved by the Insurance Commissioner under § 23-97-304(6)(B) shall:

(1) Use a definition of "preexisting condition" that is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of healthcare services within six (6) months preceding the effective date of coverage of an insured person; or

(2) Exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(b) The commissioner may extend the limitation periods set forth in subsection (a) of this section for specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(c)(1) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant when underwriting in accordance with the insurer's established underwriting standards.

(2) Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (a)(2) of this section expires.

(3) No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (a)(2) of this section.

History. Acts 2005, No. 1697, § 31.

23-97-309. Prior hospitalization or institutionalization.

(a) No long-term care insurance policy shall be delivered or issued for delivery in this state if the policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement;

(2) Conditions eligibility for any benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(b)(1) A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" the limitations or conditions, including any required number of days of confinement.

(2) A long-term care insurance policy or rider that conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(c) No long-term care insurance policy or rider that provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty (30) days after discharge from the institution.

History. Acts 2005, No. 1697, § 31.

23-97-310. Loss ratio standards.

(a) The Insurance Commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies.

(b) A specific reference to long-term care insurance policies shall be contained in the rules.

History. Acts 2005, No. 1697, § 31.

23-97-311. Right to return — Free look.

(a) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if after examination of the policy or certificate the applicant is not satisfied for any reason.

(b) Long-term care insurance policies and certificates shall contain a notice prominently printed on or attached to the first page stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if after examination of the policy or certificate the applicant is not satisfied for any reason.

(c) If an application is denied, the issuer shall refund to the applicant any premium and any other fee paid by the applicant to apply within thirty (30) days of the denial.

History. Acts 2005, No. 1697, § 31.

23-97-312. Outline of coverage.

(a)(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the outline of coverage and its purpose.

(2) The Insurance Commissioner shall prescribe a standard format for the outline, including style, arrangement, overall appearance, and content.

(3) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(4) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(5)(A) In the case of a policy issued to a group approved by the commissioner under § 23-97-304(6)(B), an outline of coverage shall not be required to be delivered if the information described in subsection (b) of this section is provided to applicants in other materials relating to enrollment.

(B) Materials relating to enrollment shall be made available to the commissioner upon request.

(b) The outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(3)(A) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium.

(B) Continuation or conversion provisions of group coverage shall be specifically described;

(4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(5) A description of the terms under which the policy or certificate may be returned and premium refunded;

(6) A brief description of the relationship between cost of care and benefits; and

(7) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under section 7702B(b) of the Internal Revenue Code of 1986.

History. Acts 2005, No. 1697, § 31; 2007, No. 496, § 21.

A.C.R.C. Notes. Acts 2007, No. 496, § 19, provided:

"The purpose of sections 20 and 21 of this act is to correct references to the Internal Revenue Code in the Long-Term Care Insurance Act of 2005, § 23-97-301 et seq., that may act to restrict the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the

Internal Revenue Code of 1986, as it existed on January 1, 2004. It is not the intent of the General Assembly to limit the tax qualification determination of long-term care insurance contracts to the federal tax qualification of the contract under the Internal Revenue Code of 1986, as it existed on January 1, 2004."

U.S. Code. Section 7702B(b) of the Internal Revenue Code of 1986, referred to in (b)(7), is codified as 26 U.S.C. § 7702B(b).

23-97-313. Certificates.

A certificate issued for delivery in this state under a group long-term care insurance policy shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

History. Acts 2005, No. 1697, § 31.

23-97-314. Delivery of policy and summary — Disclosures.

(a) If an application for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval.

(b)(1) At the time of the delivery of the policy, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider.

(2) In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request or at the time of policy delivery, whichever first occurs.

(3) The summary shall comply with all applicable requirements and include:

(A) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(B) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(C) Any exclusions, reductions, and limitations on long-term care benefits; and

(D) A statement that any long-term care inflation protection option, if required by rules and regulations of the Insurance Commissioner, is not available under the policy.

(4) If applicable to the policy type, the summary shall also include:

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits.

History. Acts 2005, No. 1697, § 31.

23-97-315. Acceleration of death benefit.

(a) Any time a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder.

(b) The report shall include:

(1) Any long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy, including, but not limited to, death benefits or cash values, due to the payment of long-term care benefits; and

(3) The remaining amount of long-term care benefits.

History. Acts 2005, No. 1697, § 31.

23-97-316. Denial of claims.

If a claim under a long-term care insurance contract is denied, within sixty (60) days of the date of a written request by the policyholder or certificate holder or a representative of the policyholder or certificate holder, the issuer shall:

(1) Provide a written explanation of the reasons for the denial; and

(2) Make available all information directly related to the denial.

History. Acts 2005, No. 1697, § 31.

23-97-317. Offer of long-term care or nursing home insurance.

Any policy or rider advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this subchapter.

History. Acts 2005, No. 1697, § 31.

23-97-318. Incontestability period.

(a) An insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if:

(1) The long-term care insurance policy or certificate has been in force for less than six (6) months and the insurer relied upon a material misrepresentation in providing coverage; or

(2) The long-term care insurance policy or certificate has been in force for at least six (6) months but less than two (2) years and the insurer relied upon a material misrepresentation in providing coverage that pertains to the condition for which benefits are sought.

(b) A policy or certificate that has been in force for two (2) years or more may be contested only by showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(c)(1) No long-term care insurance policy or certificate may be field issued based on medical or health status.

(2) As used in this section, "field issued" means issued by an agent or a third-party administrator under the underwriting authority granted to the agent or third-party administrator by an insurer.

(d) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

(e)(1) Except as provided in subdivision (e)(2) of this section, this section shall apply to all life insurance policies that accelerate benefits for long-term care.

(2)(A) In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care.

(B) The remaining death benefit shall be governed by § 23-81-105.

History. Acts 2005, No. 1697, § 31; 2007, No. 827, § 189.

23-97-319. Nonforfeiture benefits.

(a)(1) Except as provided in subsection (b) of this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate containing a nonforfeiture benefit.

(2) The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.

(3) If the policyholder or certificate holder declines the nonforfeiture benefit, then the insurer shall provide a contingent benefit upon lapse that shall be available for the period of time specified by the Insurance Commissioner following a substantial increase in premium rates.

(b)(1) When a group long-term care insurance policy is issued, the offer required in subsection (a) of this section shall be made to the group policyholder.

(2) However, if the policy is issued as group long-term care insurance as defined under § 23-97-304(6)(B), other than to a continuing care retirement community or similar entity, then the offering shall be made to each proposed certificate holder.

(c) The commissioner shall promulgate rules specifying:

(1) The type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates;

(2) The standards for nonforfeiture benefits; and

(3) The rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse under subsection (a) of this section.

History. Acts 2005, No. 1697, § 31.

23-97-320. Authority to promulgate regulations.

The Insurance Commissioner shall issue rules for long-term care insurance to:

(1) Promote premium adequacy;

(2) Protect the policyholder in the event of substantial rate increases; and

(3) Establish minimum standards for:

(A) Marketing practices;

(B) Agent compensation;

(C) Agent testing;

(D) Penalties; and

(E) Reporting practices.

History. Acts 2005, No. 1697, § 31.

23-97-321. Penalties.

In addition to any other penalties provided by the laws of this state, any insurer or agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of long-term care insurance is subject to the greater of:

(1) A fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation; or

(2) A fine of up to ten thousand dollars ($10,000).

History. Acts 2005, No. 1697, § 31.

CHAPTER 98

MINIMUM BASIC BENEFIT POLICIES AND SUBSCRIPTION CONTRACTS

SECTION.
23-98-101. Legislative findings.
23-98-102. Definitions.
23-98-103. Notices and hearings before adopting regulations.
23-98-104. Formation of trusts of qualified individuals.
23-98-105. Issuance of minimum basic benefit policies permitted — Applicability.
23-98-106. Minimum basic benefits.
23-98-107. Disclosure requirements for minimum basic benefit policies.
23-98-108. Notice of minimum basic benefit policies — Payroll deduction.
23-98-109. Managed care and cost control provisions.
23-98-110. Approval of forms and rates.
23-98-111. Record-keeping and reporting requirement for insurers.

Effective Dates. Acts 1991, No. 238, § 16: Feb. 27, 1991. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the cost of health insurance coverage is not affordable for many small

businesses, their employees, self-employed persons and other individuals; and that as a result hundreds of thousands of Arkansas citizens do not have any health insurance coverage; and that this act is immediately necessary to authorize new classes of hospital and medical insurance coverage so that qualified groups, families and individuals can obtain insurance coverage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1603, § 66: Apr. 13, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that the term disability insurance is obsolete in the insurance industry and should be updated to the usage of accident and health insurance to conform with national industry standards. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-98-101. Legislative findings.

The General Assembly finds that the cost of health insurance coverage is not affordable for many small businesses, their employees, self-employed persons, and other individuals, and that as a result hundreds of thousands of Arkansas citizens do not have any health insurance coverage. It is the intent of the General Assembly to reduce the cost of health insurance for these citizens by:

(1) Authorizing the development of new classes of hospital and medical insurance coverage for qualified groups, families, and individuals; and

(2) Authorizing the Insurance Commissioner to develop means to assist in limiting the marketing and administrative costs of certain of such new classes of insurance coverage.

History. Acts 1991, No. 238, § 1.

23-98-102. Definitions.

As used in this chapter:

(1) "Children's preventive healthcare services" means physician-delivered or physician-supervised services for eligible dependents from birth through age six (6), with periodic physical examinations including medical history, physical examination, developmental assessment, anticipatory guidance and appropriate immunizations, and laboratory tests, in keeping with prevailing medical standards for the purposes of this section;

(2) "COBRA" means the "Consolidated Omnibus Budget Reconciliation Act of 1985";

(3) "Commissioner" means the Insurance Commissioner;

(4) "Insured" means any individual or group insured under a minimum basic benefit policy issued pursuant to the provisions of this chapter;

(5) "Insurer" means an insurer, health maintenance organization, hospital, or medical service corporation offering a minimum basic benefit policy pursuant to this chapter;

(6) "Loss ratio" means the percentage derived by dividing incurred claims, both reported and not reported, by total premiums earned;

(7) "Minimum basic benefit policy" means a policy or subscription contract which an insurer may choose to offer to a qualified individual, qualified family, or qualified group pursuant to the provisions of this chapter;

(8) "Periodic physical examinations" means the routine tests and procedures for the purpose of detection of abnormalities or malfunctions of bodily systems and parts according to accepted medical practice;

(9) "Permitted coverages" means health or hospitalization coverage under a minimum basic benefit policy issued pursuant to this chapter, under Medicaid, Medicare, limited benefit policies as defined by rules and regulations of the commissioner, the Consolidated Omnibus Budget Reconciliation Act of 1985, or the provisions of § 23-86-114, § 23-86-115, or § 23-86-116;

(10) "Qualified family" means individuals all of whom are qualified individuals and all of whom are related by blood, marriage, or adoption;

(11) "Qualified group" means a group, organized other than pursuant to § 23-98-109, in which each covered individual, or covered dependent of such a covered individual, within the group is a qualified individual. A qualified group may include less than all employees of an employer;

(12)(A) "Qualified individual" means an individual who is employed in or is a resident of Arkansas and who has been without health insurance coverage, other than permitted coverage, for the twelve-month period immediately preceding the effective date of a minimum basic benefit policy issued pursuant to this chapter and who meets reasonable underwriting standards.

(B) However, children newborn to or adopted by an insured after the effective date of a policy issued to the insured pursuant to this chapter which covers the insured and members of the insured's family, shall be considered qualified individuals; and

(13) "Qualified trust" means a group organized pursuant to § 23-98-104 in which each covered individual, or covered dependent of such a covered individual, within the group is a qualified individual.

History. Acts 1991, No. 238, § 2.

U.S. Code. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), referred to in this section, is codified throughout Titles 5, 15, 19, 20, 26, 38, and 42 of the United States Code.

23-98-103. Notices and hearings before adopting regulations.

The Insurance Commissioner shall provide notice and conduct hearings in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., before adopting any regulations of general applicability to minimum basic benefit policies to be issued pursuant to this chapter.

History. Acts 1991, No. 238, § 10.

23-98-104. Formation of trusts of qualified individuals.

Solely for purposes of obtaining minimum basic benefit policies pursuant to the authority granted by this chapter, trusts may be formed composed of qualified individuals, qualified families, or qualified groups. Each trust may serve as a master policyholder. Members of qualified groups and members of such trusts may join together solely for the purpose of obtaining health insurance coverage under the provisions of this chapter. The Insurance Commissioner shall adopt rules and regulations governing the formation and operation of the trust to assure the protection of persons purchasing policies pursuant to this chapter.

History. Acts 1991, No. 238, § 4.

23-98-105. Issuance of minimum basic benefit policies permitted — Applicability.

Insurers are authorized to issue minimum basic benefit policies pursuant to and in compliance with the provisions of this chapter to qualified individuals, qualified families, qualified trusts, and qualified groups. This chapter shall apply only to those minimum basic benefit policies issued under this chapter and regulations issued by the Insurance Commissioner pursuant to the authority of this chapter. Nothing in this chapter shall be deemed to add to, detract from, or in any manner apply to policies, subscription contracts, benefits, or related activities under any other statutory or regulatory authorities.

History. Acts 1991, No. 238, § 3.

23-98-106. Minimum basic benefits.

(a) Minimum basic benefit policies offered under the authority of this chapter shall provide basic levels of primary, preventive, and hospital care, including, but not limited to, the following:

(1) Fifteen (15) days of inpatient hospitalization coverage per policy year;

(2)(A) As an option, prenatal care, including:

(i) One (1) prenatal office visit per month during the first two (2) trimesters of pregnancy;

(ii) Two (2) office visits per month during the seventh and eighth months of pregnancy; and

(iii) One (1) office visit per week during the ninth month until term.

(B) Coverage for each office visit shall include:

(i) Necessary and appropriate screening, including history, physical examination, and such laboratory and diagnostic procedures as may be deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member; and

(ii) Such prenatal counseling as the physician deems appropriate;

(3) As an option, obstetrical care, including physicians' services, delivery room, and other medically necessary hospital services;

(4)(A) As an option, coverage for children's preventive healthcare services on a periodic basis from birth through age six (6), including thirteen (13) visits at approximately the following age intervals:

(i) Birth;

(ii) Two (2) months;

(iii) Four (4) months;

(iv) Six (6) months;

(v) Nine (9) months;

(vi) Twelve (12) months;

(vii) Fifteen (15) months;

(viii) Eighteen (18) months;

(ix) Two (2) years;

(x) Three (3) years;

(xi) Four (4) years;

(xii) Five (5) years; and

(xiii) Six (6) years.

(B) The option may provide that children's preventive healthcare services which are rendered during a periodic review shall:

(i) Only be covered to the extent that these services are provided by or under the supervision of a single physician during the course of one (1) visit; and

(ii) Be reimbursed at levels established by the Insurance Commissioner which shall not exceed those established for the same services under the Medicaid program in the State of Arkansas.

(C) Copayment and deductible amounts shall not be greater than copayments and deductibles imposed for other physician's office visits;

(5) A basic level of primary and preventive care, including two (2) office visits per calendar year for covered services rendered by a provider licensed to provide the services rendered;

(6) Annual, lifetime, or other benefit limits in amounts not less than may be established by the commissioner but which initially shall be not less than one hundred thousand dollars ($100,000) as an annual benefit and two hundred fifty thousand dollars ($250,000) as a lifetime benefit;

(7) Such waiting period, if any, as the commissioner may establish for transferring from any minimum basic benefit policy issued under

this chapter by one (1) insurer to a minimum basic benefit policy issued under this chapter by another insurer;

(8)(A) Every policy issued pursuant to this chapter which covers the insured and members of the insured's family shall include coverage for newborn infant children of the insured from the moment of birth, and for adopted minors from the date of the interlocutory decree of adoption.

(B) The insurer may require that the insured give notice to his or her insurer of any newborn children within ninety (90) days following the birth of the newborn infant and of any adopted child within sixty (60) days of the date the insured has filed a petition to adopt. The coverage of newborn children or adopted children shall not be less than the same as is provided for other members of the insured's family; and

(9) Such provisions, if any, as the commissioner may require, for:

(A) An annual or other deductible or equivalent;

(B) Patient copayments, including a differential, if any, for nonpreferred providers;

(C) Annual stop loss amounts;

(D) Continuation of coverage;

(E) Conversion;

(F) Replacement of prior carrier's coverage;

(G) Exclusionary periods for preexisting conditions; and

(H) Continuation of benefits.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner shall consider the cost impact and essential nature of each of such requirements as well as the competitive impact of such requirements, and may vary any of such requirements, add, fix, or remove requirements or establish alternative benefit methods to encourage participation of insurers in a manner consistent with meeting the goal of providing minimum basic health services at an affordable price to those eligible for coverage under this chapter.

(c) The commissioner may authorize a waiver of any of the policy provisions required pursuant to this section or the commissioner's authority under this section in order to authorize a minimum basic benefit policy to be issued as a Medicaid supplement without requiring redundant coverage.

(d)(1) Any minimum basic benefit policy issued pursuant to the provisions of this chapter may be issued without the provision of the benefits or requirements mandated by the following statutes to be included in or offered to be included in accident and health insurance or health maintenance organization policies or subscription contracts or regulations issued pursuant to such statutes: §§ 23-79-129, 23-79-130, 23-79-137, 23-79-139 — 23-79-141, § 23-85-131(b), § 23-85-137, § 23-86-108(4), § 23-86-108(7), §§ 23-86-113 — 23-86-116, and 23-86-118.

(2) However, nothing in this chapter shall:

(A) Reduce any professional scope of practice as defined in the licensure law for any healthcare provider;

(B) Authorize any discrimination not permitted under Arkansas law in payment or reimbursement for services; or

(C) Be construed to repeal or eliminate the application of the Arkansas freedom of choice legislation, § 23-79-114, or coordination of benefit statutes or regulations to policies issued pursuant to this chapter.

History. Acts 1991, No. 238, § 5; 2001, No. 1603, § 65.

23-98-107. Disclosure requirements for minimum basic benefit policies.

(a) Before any insurer issues a minimum basic benefit policy, it shall obtain from the prospective insured a signed, written statement in a form approved by the Insurance Commissioner in which the prospective insured:

(1) Certifies as to eligibility for coverage under the minimum basic benefit policy;

(2) Acknowledges the limited nature of the coverage provided and an understanding of the managed care and cost control features of the minimum basic benefit policy;

(3) Acknowledges that if misrepresentations are made regarding the insured's eligibility for coverage under a minimum basic benefit policy, then the person making the misrepresentations shall forfeit coverage provided by the minimum basic benefit policy; and

(4) Acknowledges that the prospective insured, at the time of application for the minimum basic benefit policy, was offered the opportunity to purchase health insurance coverage which would have included all mandated or mandated optional benefits required by Arkansas law and that the prospective insured rejected such coverage.

(b) A copy of the written statement shall be provided to the prospective insured no later than at the time of minimum basic benefit policy delivery, and the original of the written statement shall be retained by the insurer for the longer of either the period of time in which the minimum basic benefit policy remains in effect or five (5) years.

(c) At the time coverage under a minimum basic benefit policy shall take effect for an insured, the insurer shall provide the insured with a written disclosure statement containing such information as the commissioner shall require and in a form approved by the commissioner. The disclosure statement shall be separate from the insurance policy or evidence of coverage provided to the insured. The disclosure statement shall contain at least the following information:

(1) An explanation of those mandated or mandated optional benefits not covered by the minimum basic benefit policy but which would otherwise be required to be provided under Arkansas law;

(2) An explanation of the managed care and cost control features of the minimum basic benefit policy, along with all appropriate mailing addresses and telephone numbers to be utilized by the insured in

seeking information or authorization, as well as a list of any preferred providers then contracting with the insurer, and an explanation of the obligations of the providers and the insured with regard to services determined not to be medically necessary; and

(3) An explanation of the primary and preventive care features of the minimum basic benefit policy.

(d) Any material statement made by an applicant for coverage under a minimum basic benefit policy which falsely certifies as to the applicant's eligibility for coverage under a minimum basic benefit policy shall serve as the basis for termination of coverage under any minimum basic benefit policy issued to the applicant.

History. Acts 1991, No. 238, § 8.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Battagglia, The Shift Toward Managed Care and Emerging Liability Claims Arising from Utilization Management and Financial Incentive Arrangements Between Health Care Providers and Payers, 19 U. Ark. Little Rock L.J. 155.

23-98-108. Notice of minimum basic benefit policies — Payroll deduction.

(a) Those employers in the State of Arkansas that do not provide a portion of the cost of health insurance for their employees shall provide notice to their employees of the existence of the minimum basic benefit policy authorized by this chapter. The notice shall be in a form prepared by the Insurance Commissioner and may be provided to employees by posting at the place of employment or in any other reasonable manner.

(b) Any insured, or dependent of an insured, under this chapter may provide written request to his or her employer to withhold the amount of premium on a minimum basic benefit policy from his or her paycheck along with written instructions for remittance of the premium, in which case the employer shall withhold the premium and remit the premium payment to the insurer, unless to do so would require the employer to make remittances to more than three (3) different insurers.

(c) No employer required to make a remittance of a premium under the provisions of this chapter shall be required to make such remittances more often than one (1) time per month.

(d) Nothing in this chapter shall be construed to require or mandate in any way that an employer provide or pay any portion of the cost of a minimum basic benefit policy issued under this chapter.

(e) Upon request by the commissioner, the Department of Workforce Services is authorized to provide a copy of the form of notice prepared by the commissioner to employers as the commissioner and the department may agree upon.

History. Acts 1991, No. 238, § 6.

23-98-109. Managed care and cost control provisions.

(a) The insurer may include any or all of the following managed care provisions to control the cost of a minimum basic benefit policy issued pursuant to this chapter:

(1) An exclusion for services that are not medically necessary;

(2) A procedure for preauthorization by telephone, to be confirmed in writing, by the insurer or its designee of any medical service, the cost of which is anticipated to exceed a minimum threshold, except for services necessary to treat a medical emergency;

(3)(A) A preferred panel of providers who have entered into written agreements with the insurer to provide services at specified levels of reimbursement.

(B) With the exception of health maintenance organizations, participation in such a preferred panel shall be open to all providers licensed to provide the services to be covered.

(C)(i) Any such written agreement between a provider and an insurer shall contain a provision under which the parties agree that the insured individual or covered member will have no obligation to make payment for any medical service rendered by the provider that is determined not to be medically necessary.

(ii) However, charges for medically necessary services received by the insured which are not covered by the minimum basic benefit policy shall be considered the responsibility of the insured; and

(4)(A) A provision under which any insured who obtains medical services from a nonpreferred provider shall receive reimbursement only in the amount that would have been received had services been rendered by a preferred provider, less a differential, if any, in an amount to be approved by the Insurance Commissioner but which may not exceed twenty-five percent (25%).

(B) However, charges for medically necessary services received by the insured which are not covered by the minimum basic benefit policy shall be considered the responsibility of the insured.

(b) Nothing in this chapter shall be construed to prohibit an insurer from including in a minimum basic benefit policy other managed care and cost control provisions which, subject to the approval of the commissioner, have the potential to control costs in a manner which does not result in inequitable treatment of an insured under this chapter.

History. Acts 1991, No. 238, § 7.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Battagglia, The Shift Toward Managed Care and Emerging Liability Claims Arising from Utilization Management and Financial Incentive Arrangements Between Health Care Providers and Payers, 19 U. Ark. Little Rock L.J. 155.

23-98-110. Approval of forms and rates.

(a) All minimum basic benefit policy forms, including applications, enrollment forms, policies, certificates, evidences of coverage, riders, amendments, endorsements, disclosure forms, and marketing communications used in connection with the sale or advertisement of a minimum basic benefit policy shall be submitted to the Insurance Commissioner for approval in the same manner as required by § 23-79-109(a) or § 23-76-112(a).

(b) Minimum basic benefit policies are subject to the filing and approval statutes, rules, and regulations of the state. No rate shall be considered reasonable nor shall it be approved unless:

(1) It is based upon a pool, community rating, or other rating formula acceptable to the commissioner; and

(2)(A) As to individual policies and policies issued to qualified trusts, it is likely to produce a loss ratio, as certified by a qualified actuary, which is acceptable to the commissioner, but in no event shall such a loss ratio be less than sixty-five percent (65%).

(B) However, the commissioner may set a minimum loss ratio for group policies issued pursuant to this chapter if the commissioner determines that inequitable or unfair treatment of policyholders would otherwise result.

(c) To the extent that an insurer has a surplus in a given year which has been generated on minimum basic benefit policies issued pursuant to this chapter to a qualified group by a loss ratio of less than seventy-five percent (75%) or issued pursuant to this chapter to qualified individuals, qualified families, or qualified trusts by a loss ratio of less than sixty-five percent (65%), that surplus shall be taken into consideration in setting rates in following years in such manner as to benefit the holders of such minimum basic benefit policies.

(d)(1) The commissioner may require that as to each minimum basic benefit policy approved, the insurer provide a statement of the portion of the rate or premium applicable to the minimum basic benefit policy coverage required by this chapter, or the commissioner pursuant to this chapter, or such other information as the commissioner may require so that prospective purchasers of policies pursuant to this chapter may have an ability to make a direct comparison of the cost of the minimum basic benefits within policies of the same class issued by different insurers.

(2) The commissioner may include rate comparison or other cost information in the form of notice which may be provided by the commissioner to employers pursuant to this chapter.

History. Acts 1991, No. 238, § 9.

23-98-111. Record-keeping and reporting requirement for insurers.

Each insurer issuing a minimum basic benefit policy in this state shall maintain separate and distinct records of enrollment, claim costs, premium income, utilization, and such other information as may be required by the Insurance Commissioner. Each insurer providing a minimum basic benefit policy shall furnish an annual report to the commissioner in a form prescribed by the commissioner which shall contain such information as the commissioner may require to analyze the effect of insurance coverage issued pursuant to this chapter. The annual report required shall be in a form consistent with the forms, if any, adopted by the National Association of Insurance Commissioners for such a purpose.

History. Acts 1991, No. 238, § 11.

CHAPTER 99

HEALTHCARE PROVIDERS

SUBCHAPTER.

1. General Provisions. [Reserved.]
2. Patient Protection Act of 1995.
3. Primary Eye Care Provider Act.
4. Arkansas Health Care Consumer Act.
5. Arkansas Mental Health Parity Act of 2009.
6. Dental Point of Service Act..
7. Grievance Systems and Quality Assessment and Improvement Systems.
8. Enforcement of any Willing Provider Laws.

Cross References. Enforcement of any willing provider laws, § 23-99-801 et seq.

Subchapter 1 — General Provisions

[Reserved]

Subchapter 2 — Patient Protection Act of 1995

SECTION.

23-99-201. Short title.
23-99-202. Legislative findings and intent.
23-99-203. Definitions.
23-99-204. Terms of health benefit plan.
23-99-205. Construction.
23-99-206. Violations.
23-99-207. Civil penalties.
23-99-208. Void provisions.
23-99-209. Applicability.

A.C.R.C. Notes. Acts 1995, No. 505, § 12, provided: "In the event any portion of this act is found to be in violation of federal law or in conflict therewith, or held to be unconstitutional, that portion shall hereby be repealed and all other portions of this act shall remain in force."

Acts 1995, No. 1193, § 9, provided: "In the event any portion of this act is found to be in violation of federal law or in conflict therewith, or held to be unconstitutional, that portion shall hereby be repealed and all other portions of this act shall remain in force."

Publisher's Notes. In 1997, this subchapter was held to be preempted by the federal Employment Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., and a permanent injunction barring the enforcement of this subchapter was granted. See Prudential Ins. Co. of America v. National Park Medical Ctr., 964 F. Supp. 1285 (E.D. Ark. 1997), aff'd, 154 F.3d 812 (8th Cir. 1998). However, the permanent injunction was subsequently dissolved based upon a decision by the United States Supreme Court involving similar statutory law of another state. See Prudential Ins. Co. of America v. National Park Medical Ctr., Inc., No. 4:95CV514JMM, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004.) aff'd in part, rev'd in part, and remanded, 413 F.3d 897 (8th Cir. 2005).

Cross References. Enforcement of any willing provider laws, § 23-99-801 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Price, Preemption "Between the Poles:" ERISA's Effect on State Common Law Actions Other than Benefit Claims. 19 U. Ark. Little Rock L.J. 541.

23-99-201. Short title.

This subchapter may be cited as the "Patient Protection Act of 1995".

History. Acts 1995, No. 505, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Note, Puncturing the Funnel — Saving the "Any Willing Provider" Statutes from ERISA Preemption, 27 U. Ark. Little Rock L. Rev. 407.

CASE NOTES

Analysis

Construction With Other Law.
Federal Preemption.

Construction With Other Law.

Patient Protection Act, § 23-99-201 et seq., was not repealed by the Freedom of Choice Among Health Benefit Plans Act of 1999, § 23-86-401 et seq. Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., No. 4:95CV514JMM, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff'd in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

Federal Preemption.

A permanent injunction barring health care providers who were seeking admittance into an insurer's exclusive provider networks pursuant to the Patient Protection Act was dissolved pursuant to Fed. R. Civ. P. 60(b)(5) after the U.S. Supreme Court held that a similar law in Kentucky was not preempted by ERISA, on the basis that the Supreme Court decision constituted an extraordinary circumstance. Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., No. 4:95CV514JMM, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12,

2004), aff'd in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

23-99-202. Legislative findings and intent.

The General Assembly finds that patients should be given the opportunity to see the healthcare provider of their choice. In order to assure the citizens of the State of Arkansas the right to choose the provider of their choice, it is the intent of the General Assembly to provide the opportunity of providers to participate in health benefit plans.

History. Acts 1995, No. 505, § 2.

CASE NOTES

Cited: Prudential Ins. Co. of America v. National Park Medical Ctr., 964 F. Supp. 1285 (E.D. Ark. 1997).

23-99-203. Definitions.

(a)(1) "Copayment" means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service or percentage of healthcare costs with their healthcare insurer paying the remainder of the charge.

(2) The copayment is incurred at the time the service is rendered.

(3) The copayment may be a fixed or variable amount.

(b) "Gatekeeper system" means a system of administration used by any health benefit plan in which a primary care provider furnishes basic patient care and coordinates diagnostic testing, indicated treatment, and specialty referral for persons covered by the health benefit plan.

(c) "Health benefit plan" means any entity or program that provides reimbursement, including capitation, for healthcare services, except and excluding any entity or program that provides reimbursement and benefits pursuant to Arkansas Constitution, Amendment 26, Acts 1993, No. 796, or the Public Employee Workers' Compensation Act, § 21-5-601 et seq., and rules, regulations, and schedules adopted thereunder.

(d) "Healthcare provider" means those individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

(1) Advanced practice nurses;

(2) Athletic trainers;

(3) Audiologists;

(4) Certified orthotists;

(5) Chiropractors;

(6) Community mental health centers or clinics;

(7) Dentists;

(8) Home health care;

(9) Hospice care;

(10) Hospital-based services;
(11) Hospitals;
(12) Licensed ambulatory surgery centers;
(13) Licensed certified social workers;
(14) Licensed dieticians;
(15) Licensed professional counselors;
(16) Licensed psychological examiners;
(17) Long-term care facilities;
(18) Occupational therapists;
(19) Optometrists;
(20) Pharmacists;
(21) Physical therapists;
(22) Physicians and surgeons (M.D. and D.O.);
(23) Podiatrists;
(24) Prosthetists;
(25) Psychologists;
(26) Respiratory therapists;
(27) Rural health clinics; and
(28) Speech pathologists.

(e) "Healthcare services" means services and products provided by a healthcare provider within the scope of the healthcare provider's license.

(f) "Healthcare insurer" means any entity, including, but not limited to:

(1) Insurance companies;
(2) Hospital and medical service corporations;
(3) Health maintenance organizations;
(4) Preferred provider organizations;
(5) Physician hospital organizations;
(6) Third-party administrators; and
(7) Prescription benefit management companies,

authorized to administer, offer, or provide health benefit plans.

History. Acts 1995, No. 505, § 3; 1995, No. 1193, § 1; 2005, No. 2238, § 1.

CASE NOTES

Cited: Prudential Ins. Co. of America v. National Park Medical Ctr., 964 F. Supp. 1285 (E.D. Ark. 1997).

23-99-204. Terms of health benefit plan.

(a) A healthcare insurer shall not, directly or indirectly:

(1)(A) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those healthcare providers who participate in the health benefit plan according to the terms offered.

(B) "Monetary advantage or penalty" includes:

(i) A higher copayment;

(ii) A reduction in reimbursement for services; or

(iii) Promotion of one healthcare provider over another by these methods;

(2) Impose upon a beneficiary of healthcare services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under that health benefit plan when the beneficiary is receiving services from a participating healthcare provider pursuant to that health benefit plan; or

(3) Prohibit or limit a healthcare provider that is qualified under § 23-99-203(d) and is willing to accept the health benefit plan's operating terms and conditions, schedule of fees, covered expenses, and utilization regulations and quality standards, from the opportunity to participate in that health benefit plan.

(b) Nothing in this subchapter shall prevent a health benefit plan from instituting measures designed to maintain quality and to control costs, including, but not limited to, the utilization of a gatekeeper system, as long as such measures are imposed equally on all providers in the same class.

History. Acts 1995, No. 505, § 4; 1995, No. 1193, § 2.

23-99-205. Construction.

(a) Nothing in this subchapter shall be construed to require any healthcare insurer to cover any specific healthcare service.

(b) Provided, however, no condition or measure shall have the effect of excluding any type or class of provider qualified under § 23-99-204(a)(3) to provide that service.

History. Acts 1995, No. 505, § 5; 1995, No. 1193, § 3.

CASE NOTES

In General.

A permanent injunction barring health care providers who were seeking admittance into an insurer's exclusive provider networks pursuant to the Patient Protection Act was dissolved pursuant to Fed. R. Civ. P. 60(b)(5) after the U.S. Supreme Court held that a similar law in Kentucky was not preempted by ERISA, on the basis that the Supreme Court decision constituted an extraordinary circumstance. Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., No. 4:95CV514JMM, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff'd in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

23-99-206. Violations.

It is a violation of this subchapter for any healthcare insurer or other person or entity to provide any health benefit plan providing for healthcare services to residents of this state that does not conform to this subchapter, but nothing in this subchapter shall constitute a

violation on the basis of actions taken by the health benefit plan to maintain quality, enforce utilization regulations, and to control costs.

History. Acts 1995, No. 505, § 8.

23-99-207. Civil penalties.

To the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any provider adversely affected by a violation of this subchapter may sue in circuit court only for injunctive relief against the healthcare insurer, but not for damages. The prevailing party shall be allowed a reasonable attorney's fee and costs.

History. Acts 1995, No. 505, § 6; 2005, No. 960, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Insurance Law, 28 U. Ark. Little Rock L. Rev. 393.

CASE NOTES

Suits for Damages.

Anti-Injunction Act, 28 U.S.C.S. § 2283, deprived the district court of jurisdiction over the suit filed by two health insurance companies under the All Writs Act, 28 U.S.C.S. § 1651, which sought to enjoin several health care providers from prosecuting a state court suit against the companies. The relitigation exception to Anti-Injunction Act did not apply because the court had not previously entered a final judgment determining the providers' claims under the Arkansas Any Willing Provider statute or their claims for damages under the pre-2005 version of this section. Ark. Blue Cross & Blue Shield v. St. Vincent Infirmary Med. Ctr., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 92101 (E.D. Ark. Dec. 5, 2007), aff'd, Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A., 551 F.3d 812 (8th Cir. 2009).

Neither the res judicata nor collateral estoppel doctrines applied to bar the claims asserted by several health providers against two health insurance companies under the Arkansas Any Willing Provider (AWP) statute or their claims for damages under the pre-2005 version of this section because: (1) although the providers had asserted their claims in a prior suit, the claims had been dismissed without prejudice pursuant to 28 U.S.C.S. § 1367(c); and (2) the issues raised by the providers in their pending state court suit were different from the issues raised in prior suits that challenged the validity of the AWP statute. Ark. Blue Cross & Blue Shield v. St. Vincent Infirmary Med. Ctr., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 92101 (E.D. Ark. Dec. 5, 2007), aff'd, Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A., 551 F.3d 812 (8th Cir. 2009).

23-99-208. Void provisions.

(a) To avoid impairment of existing contracts, this subchapter shall only apply to contracts issued or renewed after July 28, 1995.

(b) Any provision in a health benefit plan which is executed, delivered, or renewed, or otherwise contracts for provision of services in this

state that is contrary to this subchapter, shall, to the extent of the conflict, be void.

History. Acts 1995, No. 505, § 7; 1995, No. 1193, § 4.

23-99-209. Applicability.

The provisions of this subchapter shall not apply to self-funded or other health benefit plans that are exempt from state regulation by virtue of the Employee Retirement Income Security Act of 1974, as amended.

History. Acts 1995, No. 1193, § 5.

U.S. Code. The Employee Retirement Income Security Act of 1974, as amended, referred to in this section, is codified as 29 U.S.C. § 1001 et seq.

CASE NOTES

In General.

A permanent injunction barring health care providers who were seeking admittance into an insurer's exclusive provider networks pursuant to the Patient Protection Act was dissolved pursuant to Fed. R. Civ. P. 60(b)(5) after the U.S. Supreme Court held that a similar law in Kentucky was not preempted by ERISA, on the basis that the Supreme Court decision constituted an extraordinary circumstance. Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., No. 4:95CV514JMM, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff'd in part, reversed in part, 413 F.3d 897 (8th Cir. 2005).

Subchapter 3 — Primary Eye Care Provider Act

SECTION.
23-99-301. Short title.
23-99-302. Definitions.
23-99-303. Requirements for health benefit plans.
23-99-304. Subchapter not to prevent treatment.
23-99-305. Remedies.

A.C.R.C. Notes. Acts 1995, No. 515, § 8, provided: "All laws and parts of laws in conflict with this act are hereby repealed. All of the terms and conditions of this act shall remain in effect in their entirety unless and until a section or subsection is specifically cited and repealed by subsequent legislation, or is found to be invalid by a court of competent jurisdiction."

Acts 1995, No. 1092, § 9, provided: "All laws and parts of laws in conflict with this act are hereby repealed. All of the terms and conditions of this act shall remain in effect in their entirety unless and until a section or subsection is specifically cited and repealed by subsequent legislation, or is found to be invalid by a court of competent jurisdiction."

Effective Dates. Acts 1995, No. 515, § 9: Mar. 2, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that creation of the position of primary eye care provider in health benefit plans and elimination of any form of discrimination among such providers is in the public interest and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1092, § 6, provided: "Section 9 of Act 515 of 1995 is hereby

repealed and Act 515 shall become effective on July 1, 1995."

Acts 1995, No. 1092, § 10: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that creation of the position of primary eye care provider in health benefit plans and elimination of any form of discrimination among such providers is in the public interest and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

23-99-301. Short title.

This subchapter shall be known and may be cited as the "Primary Eye Care Provider Act".

History. Acts 1995, No. 515, § 1; 1995, No. 1092, § 1.

23-99-302. Definitions.

As used in this subchapter:

(1) "Covered persons" means any individual or family that is enrolled in a health benefit plan or policy from a healthcare insurer and on whose behalf the healthcare insurer is obligated to pay for or provide eye and/or vision care benefits;

(2) "Covered service" means those healthcare services, including eye and/or vision care benefits, which the healthcare insurer is obligated to pay for or provide to covered persons under the health benefit plan or policy;

(3)(A) "Eye and/or vision care benefits" means those services and materials which are provided by a primary eye care provider who is functioning within the scope of his or her license.

(B) The conditions imposed by any specific health benefit plan upon the provision of eye and/or vision care benefits shall not:

(i) Prohibit the primary eye care provider from providing covered services to covered persons at his or her highest level of licensure and competence at any given time, as determined by his or her respective licensing board; or

(ii) Require that the primary eye care provider hold hospital staff privileges or include any other condition as a requirement which would have the practical effect of excluding any class of provider from participation in the health benefit plan;

(4) "Gatekeeper" means a covered person's primary care provider in a gatekeeper system;

(5) "Gatekeeper system" means a system of administration used by any health benefit plan in which a primary care provider furnishes basic patient care and coordinates diagnostic testing, indicated treatment, and specialty referral for persons covered by the health benefit plan;

(6) "Health benefit plan" means any public or private health plan, program, policy, subscriber agreement, or contract implemented in the State of Arkansas which includes or may include payment, reimbursement, including capitation, or financial compensation for provision of eye and/or vision care benefits to covered persons but does not include workers' compensation coverage or reimbursement;

(7) "Healthcare insurer" means any entity, including, but not limited to, insurance companies, hospital and medical service corporations, health maintenance organizations, preferred provider organizations, and physician hospital organizations, that is authorized by the State of Arkansas to offer or provide health benefit plans, policies, subscriber contracts, or any other contracts of a similar nature which indemnify or compensate healthcare providers for the provision of healthcare services; and

(8) "Primary eye care provider" means an ophthalmologist or optometrist licensed by the State of Arkansas who has been selected by a person covered by a health benefit plan to provide eye and/or vision care benefits and who agrees to provide these services in accordance with the terms, conditions, reimbursement rates, and standards of quality as set forth within the specific health benefit plan.

History. Acts 1995, No. 515, § 2; 1995, No. 1092, § 2.

23-99-303. Requirements for health benefit plans.

A health benefit plan that includes, or may include, eye and/or vision care benefits shall:

(1) Include all primary eye care providers who are selected by covered persons of the health benefit plan for the provision of all eye and/or vision care benefits provided by the health benefit plan;

(2) Permit any licensed optometrist or ophthalmologist who agrees to abide by the terms, conditions, reimbursement rates, and standards of quality of the health benefit plan to serve as a primary eye care provider to any person covered by that health benefit plan;

(3) Guarantee that all covered persons who are eligible for eye and/or vision care benefits under a health benefit plan shall have direct access to the primary eye care provider of their choice independent of, and without referral from, any other provider or entity;

(4)(A) Assure that those plans utilizing a gatekeeper system shall designate the primary eye care provider as the gatekeeper who shall provide basic patient care and coordinate diagnostic testing, indicated treatment, and specialty referral for those covered persons in the provision of eye and/or vision care benefits.

(B)(i) Nothing in this subchapter shall prevent a covered person from having direct access to that person's primary care provider, or gatekeeper, for the treatment of eye disease or injury and being reimbursed in accordance with the terms and fee schedule of the health benefit plan.

(ii) However, nothing contained in this subchapter shall require payment of the monthly patient management fee by the Arkansas Medicaid Program to a primary eye care provider gatekeeper;

(5) Not discriminate between individual providers or classes of providers in the amount of reimbursement, copayment, or other financial compensation for the same or essentially similar services provided by the health benefit plan;

(6) Not promote or recommend any individual provider or class of providers to a covered person by any method or means;

(7) Assure that all primary eye care providers selected by persons covered by a health benefit plan are included on the list of participating providers of the health benefit plan;

(8) Assure that an adequate number of primary eye care providers are included to guarantee reasonable accessibility, timeliness of care, convenience, and continuity of care to covered persons; and

(9) Make available to covered persons a listing of all primary eye care providers, their practice locations, and telephone numbers on a regular, timely basis.

History. Acts 1995, No. 515, § 3; 1995, No. 1092, § 3.

23-99-304. Subchapter not to prevent treatment.

Nothing in this subchapter shall prevent any person covered by a health benefit plan from receiving emergency eye care nor shall it prevent any person from exercising his or her right to receive treatment from his or her personal doctor and being reimbursed in accordance with the terms and fee schedule of the health benefit plan.

History. Acts 1995, No. 515, § 4; 1995, No. 1092, § 4.

23-99-305. Remedies.

Any person adversely affected by a violation of this subchapter may bring action in a court of competent jurisdiction for injunctive relief against the healthcare insurer and, upon prevailing, in addition to such injunctive relief, shall recover damages not less than one thousand dollars ($1,000) plus attorney's fees and costs.

History. Acts 1995, No. 515, § 5; 1995, No. 1092, § 5.

Subchapter 4 — Arkansas Health Care Consumer Act

SECTION.
23-99-401. Short title.
23-99-402. Legislative findings and intent.
23-99-403. Definitions.
23-99-404. Benefits for mothers and newborns.

SECTION.
23-99-405. Mastectomies.
23-99-406. Obstetrical and gynecological services.
23-99-407. "Gag clause" prohibition.
23-99-408. Continuity of care.
23-99-409. Prescription drug formulary.
23-99-410. Grievance procedures.
23-99-411. Processing applications of providers.
23-99-412. Provider input.
23-99-413. Disclosure requirements.
23-99-414. Regulations.
SECTION.
23-99-415. Enforcement and penalties.
23-99-416. Application of subchapter.
23-99-417. Coverage required for orthotic devices, orthotic services, prosthetic devices, and prosthetic services.
23-99-418. Coverage for autism spectrum disorders required — Definitions.
23-99-419. Gastric pacemakers.
23-99-420. Prior authorization.

Effective Dates. Acts 2011, No. 196, § 2: Oct. 1, 2011.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Battagglia, The Shift Toward Managed Care and Emerging Liability Claims Arising from Utilization Management and Financial Incentive Arrangements Between Health Care Providers and Payers, 19 U. Ark. Little Rock L.J. 155.

23-99-401. Short title.

This subchapter shall be known and may be cited as the "Arkansas Health Care Consumer Act".

History. Acts 1997, No. 1196, § 1.

23-99-402. Legislative findings and intent.

As the state's insurance sector becomes increasingly dominated by managed care features that include decisions regarding coverage and appropriateness of health care, there is a vital need to protect patients in this environment.

History. Acts 1997, No. 1196, § 2.

23-99-403. Definitions.

As used in this subchapter:

(1) "Acute condition" means a medical condition, illness, or disease having a short and relatively severe course;

(2) "Commissioner" means the Insurance Commissioner;

(3) "Covered person" means a person on whose behalf the healthcare insurer issuing or delivering the health benefit plan is obligated to pay benefits pursuant to the health benefit plan;

(4)(A) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in this state, including indemnity and managed care plans and including self-insured governmental and church plans, but excluding plans providing healthcare services pursuant to Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.

(B) "Health benefit plan" does not include an accident-only, specified disease, hospital indemnity, long-term care, disability income, or other limited-benefit health insurance policy;

(5) "Healthcare insurer" or "insurer" means any insurance company, hospital and medical service corporation, or health maintenance organization issuing or delivering health benefit plans in this state and subject to the following laws:

(A) The Arkansas Insurance Code;

(B) Section 23-76-101 et seq., pertaining to health maintenance organizations;

(C) Section 23-75-101 et seq., pertaining to hospital and medical service corporations; and

(D) Any successor laws of the foregoing;

(6) "Managed care plan" means a health benefit plan that either requires a covered person to use or creates incentives, including financial incentives, for a covered person to use participating providers;

(7)(A) "Orthotic device" means an external device that is:

(i) Intended to restore physiological function or cosmesis to a patient; and

(ii) Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with the delivery of the device to the patient.

(B) "Orthotic device" does not include a cane, a crutch, a corset, a dental appliance, an elastic hose, an elastic support, a fabric support, a generic arch support, a low-temperature plastic splint, a soft cervical collar, a truss, or other similar device that:

(i) Is carried in stock and sold without therapeutic modification by a corset shop, department store, drug store, surgical supply facility, or similar retail entity; and

(ii) Has no significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body;

(8) "Orthotic service" means the evaluation and treatment of a condition that requires the use of an orthotic device;

(9) "Participating provider" means a provider who or that has agreed to provide healthcare services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the healthcare insurer;

(10) "Person" or "entity" means and includes, individually and collectively, any individual, corporation, partnership, firm, trust, association, voluntary organization, or any other form of business enterprise or legal entity;

(11) "Policyholder" means the employer, union, individual, or other person or entity that purchases, issues, or sponsors a health benefit plan;

(12)(A) "Prosthetic device" means an external device that is:

(i) Intended to replace an absent external body part for the purpose of restoring physiological function or cosmesis to a patient; and

(ii) Custom-designed, fabricated, assembled, fitted, or adjusted for the patient using the device prior to or concurrent with being delivered to the patient.

(B) "Prosthetic device" does not include an artificial eye, an artificial ear, a dental appliance, a cosmetic device such as artificial eyelashes or wigs, a device used exclusively for athletic purposes, an artificial facial device, or other device that does not have a significant impact on the neuromuscular, musculoskeletal, or neuromusculoskeletal functions of the body;

(13) "Prosthetic service" means the evaluation and treatment of a condition that requires the use of a prosthetic device;

(14) "Specialty" means a provider's particular area of specialty within his or her licensed scope of practice; and

(15) "Type" of provider means the licensed scope of practice.

History. Acts 1997, No. 1196, § 3; 2009, No. 950, § 1.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

Amendments. The 2009 amendment, in (4), inserted (4)(B), redesignated the existing text accordingly, and substituted "self-insured governmental and church plans" for "governmental plans as defined in 29 U.S.C. § 1002(32)"; inserted (7), (8), (12), and (13), and redesignated the remaining subdivisions accordingly; substituted "purchases, issues, or sponsors a" for "purchases the" in (11); and made minor stylistic changes.

23-99-404. Benefits for mothers and newborns.

(a)(1) Except as provided in subsection (b) of this section, a healthcare insurer may not restrict benefits for any hospital stay in connection with childbirth for the mother or newborn child to less than forty-eight (48) hours following a normal vaginal delivery or to less than ninety-six (96) hours following cesarean section.

(2) A healthcare insurer may not require that a provider obtain authorization for prescribing any length of stay required under subdivision (a)(1) of this section.

(b) Subdivision (a)(1) of this section shall not apply if the decision to discharge the mother or her newborn child prior to the expiration of the minimum stay is made by the attending physician in consultation with the mother.

History. Acts 1997, No. 1196, § 4.

23-99-405. Mastectomies.

(a) Every health benefit plan providing mastectomy benefits and issued or renewed after July 16, 2003, shall conform with the requirements of the Women's Health and Cancer Rights Act of 1998, 42 U.S.C. §§ 300gg-6 and 300gg-52, as it existed on January 1, 2003.

(b) To the extent the requirements of this section do not conflict with federal law, rules, or regulations, each healthcare insurer providing mastectomy benefits in a health benefit plan shall provide, in a manner determined in consultation with the attending physician and the enrollee or insured:

(1) For medical and surgical benefits for any hospital stay in connection with a mastectomy for not less than forty-eight (48) hours unless the decision to discharge the patient before the expiration of the minimum length of stay is made by an attending physician in consultation with the enrollee or insured;

(2) The following medical and surgical benefits with respect to mastectomy coverage if an enrollee or insured receives benefits in connection with a mastectomy and elects breast reconstruction:

(A) Surgery and reconstruction of the breast on which the mastectomy has been performed;

(B) Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(C) Prostheses and coverage for physical complications at all stages of a mastectomy, including lymphedemas; and

(3) Written notice of the availability of coverage under this section to the enrollee or insured upon enrollment and annually thereafter.

(c) No healthcare insurer providing mastectomy benefits under this section shall:

(1) Deny an enrollee or insured eligibility or continued eligibility to enroll or renew coverage under the terms of the health benefit plan solely for the purpose of avoiding the requirements of this section; or

(2) Penalize, reduce, or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this section.

History. Acts 1997, No. 1196, § 5; 2003, No. 179, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, Health Care Providers, 26 U. Ark. Little Rock L. Rev. 479.

23-99-406. Obstetrical and gynecological services.

(a) In order to ensure that healthcare benefits are safely and appropriately delivered to women, insurers which require the selection or assignment of a primary care physician shall allow each covered person

who is a woman to select a participating obstetrician/gynecologist in addition to her primary care physician.

(b) If the woman chooses to make this selection, the insurer shall allow the woman to go directly to her selected obstetrician/gynecologist, without referral from her primary care physician, for obstetrical and gynecological services.

History. Acts 1997, No. 1196, § 6.

23-99-407. "Gag clause" prohibition.

No participating provider may be prohibited, restricted, or penalized in any way from disclosing to any covered person any healthcare information that the participating provider deems appropriate regarding the nature of treatment, risks, or alternatives thereto, the availability of alternate therapies, consultations, or tests, the decision of utilization reviewers or similar persons to authorize or deny services, the process that is used to authorize or deny healthcare services or benefits, or information on financial incentives and structures used by the insurer.

History. Acts 1997, No. 1196, § 7.

23-99-408. Continuity of care.

(a) When healthcare insurers use participating providers, the healthcare insurers shall develop procedures to provide for the continuity of care of their covered persons. At a minimum, the procedures shall:

(1) Ensure that when a new patient is enrolled in a health benefit plan and is being treated by a nonparticipating provider for a current episode of an acute condition, the patient may continue to receive treatment as an in-network benefit from that provider until the current episode of treatment ends or until the end of ninety (90) days, whichever occurs first;

(2) Ensure that when a provider's participation is terminated, his or her patients under the health benefit plan may continue to receive care from that provider as an in-network benefit until a current episode of treatment for an acute condition is completed or until the end of ninety (90) days, whichever occurs first; and

(3) Explain how the covered person may request to continue services under subdivisions (a)(1) and (2) of this section.

(b) During the period covered by subdivisions (a)(1) and (2) of this section, the provider shall be deemed to be a participating provider for purposes of reimbursement, utilization management, and quality of care.

(c) Nothing in this section shall require a healthcare insurer to provide benefits that are not otherwise covered under the terms and provisions of the health benefit plan.

History. Acts 1997, No. 1196, § 8.

23-99-409. Prescription drug formulary.

When a healthcare insurer uses a formulary for prescription drugs, the insurer shall include a written procedure whereby covered persons can obtain, without penalty and in a timely fashion, specific drugs and medications not included in the formulary when:

(1) The formulary's equivalent has been ineffective in the treatment of the covered person's disease or condition; or

(2) The formulary's drug causes or is reasonably expected to cause adverse or harmful reactions in the covered person.

History. Acts 1997, No. 1196, § 9.

23-99-410. Grievance procedures.

(a) A healthcare insurer issuing or delivering a managed care plan shall establish for those managed care plans a grievance procedure which provides covered persons with a prompt and meaningful review on the issue of denial, in whole or in part, of a healthcare treatment or service.

(b)(1) The covered person shall be provided prompt notice in writing of the outcome of the grievance procedure.

(2) In the event the outcome is adverse to the covered person, the notice shall include specific findings related to the grievance.

History. Acts 1997, No. 1196, § 10.

23-99-411. Processing applications of providers.

(a)(1)(A) Healthcare insurers shall establish mechanisms to ensure timely processing of requests for participation or renewal by providers and in making decisions that affect participation status.

(B) These mechanisms shall include, at a minimum, provisions for the provider to receive a written statement of reasons for the healthcare insurer's denial of a request for initial participation or renewal.

(2)(A) Healthcare insurers shall make a decision within:

(i) Ninety (90) calendar days from the date of submission of a completed application as defined by rule of the Insurance Commissioner for participation or a request for renewal by a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.; and

(ii) One hundred eighty (180) calendar days from the date of submission of a completed application as defined by rule of the commissioner for participation or a request for renewal by any other provider.

(B) However, when a physician's credentials are verified through the Arkansas State Medical Board's Centralized Credentials Verification Service under § 17-95-107, the ninety (90) days specified

under subdivision (a)(2)(A)(i) of this section is tolled from the date an order is received by the Centralized Credentials Verification Service from the healthcare insurer until the date the healthcare insurer receives notification by the Centralized Credentials Verification Service that the file is complete and available for retrieval.

(C)(i) If the information provided by the initial application, the healthcare insurer's investigation, or the Centralized Credentials Verification Service requires the healthcare insurer to collect more detailed information from the provider to fairly and responsibly process the application, the time specified under subdivision (a)(2)(A)(i) of this section is tolled, and the application is suspended from the date a written request for the information is sent to the provider until the request is fully and completely answered and sent to the healthcare insurer by the provider.

(ii) If the request is not fully answered within ninety (90) days of the date it was sent, the healthcare insurer, in its discretion, may treat the application as abandoned and deny it.

(iii) The request and response under this section shall be sent by regular mail or other means of delivery as may be allowed by rules adopted by the commissioner.

(3) If a physician is already credentialed by the healthcare insurer but changes employment or changes location, the healthcare insurer shall only require the submission of such additional information, if any, as is necessary to continue the physician's credentials based upon the changed employment or location.

(4) Healthcare insurers shall promptly notify providers:

(A) Of any delay in processing applications; and

(B) The reasons for a delay in processing applications.

(5) The commissioner may adopt rules to ensure that covered healthcare claims submitted by patients or their providers are not negatively affected by delays in processing participation applications.

(6) The commissioner shall adopt rules to implement this subsection.

(b) Nothing in this section shall prevent a provider or a healthcare insurer from terminating a participating provider contract in accordance with its terms.

History. Acts 1997, No. 1196, § 11; 2009, No. 350, § 1.

Amendments. The 2009 amendment rewrote (a).

23-99-412. Provider input.

All healthcare insurers issuing or delivering managed care plans shall be required to establish a mechanism whereby participating providers provide input into the healthcare insurer's medical policy, utilization review criteria and procedures, quality and credentialing criteria, and medical management procedures.

History. Acts 1997, No. 1196, § 12.

23-99-413. Disclosure requirements.

Upon request, healthcare insurers must provide the following information in a clear and understandable form to all prospective policyholders, policyholders, and covered persons. Insurers shall notify policyholders and covered persons of their right to request the information, which must include:

(1) Coverage provisions, benefits, and exclusions by category of service and provider;

(2) A description of the prior authorization, precertification, and referral requirements;

(3) The existence of prescription drug formularies and prior approval requirements for prescription drugs;

(4) The name, number, type, specialty, and geographic location of participating providers; and

(5)(A) Criteria by which providers are evaluated for network participation.

(B) Proprietary information shall not be disclosed.

(C) Criteria may include, but are not limited to, geographic limitations, geographic distribution of patients, specialty limitation, anticipated numbers and types of providers needed, and economic considerations. This information shall also be made available to providers upon request.

History. Acts 1997, No. 1196, § 13.

23-99-414. Regulations.

The Insurance Commissioner may promulgate necessary rules and regulations for carrying out this subchapter.

History. Acts 1997, No. 1196, § 14.

23-99-415. Enforcement and penalties.

The Insurance Commissioner shall have all the powers to enforce this subchapter as are granted to the commissioner elsewhere in the Arkansas Insurance Code.

History. Acts 1997, No. 1196, § 15.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-99-416. Application of subchapter.

This subchapter applies to all health benefit plans issued, renewed, extended, or modified on or after August 1, 1997. "Renewed, extended, or modified" shall include all health benefit plans in which the insurer has reserved the right to change the premium.

History. Acts 1997, No. 1196, § 16.

23-99-417. Coverage required for orthotic devices, orthotic services, prosthetic devices, and prosthetic services.

(a)(1) Subject to subdivision (a)(2) of this section and subsections (b) and (c) of this section, a health benefit plan that is issued for delivery, delivered, renewed, or otherwise contracted for in this state shall provide coverage for eligible charges within limits of coverage that are no less than eighty percent (80%) of Medicare allowable as defined by the Centers for Medicare and Medicaid Services, Healthcare Common Procedure Coding System as of January 1, 2009, or as of a later date if adopted by rule of the Insurance Commissioner for:

(A) An orthotic device;

(B) An orthotic service;

(C) A prosthetic device; and

(D) A prosthetic service.

(2) This section does not require coverage for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service for a replacement that occurs more frequently than one (1) time every three (3) years unless medically necessary or indicated by other coverage criteria.

(b)(1) Eligible charges and limits of or exclusions from coverage under subsection (a) of this section shall be based on medical necessity or the health benefit plan's coverage criteria for other medical services, which may include without limitation:

(A) The information and recommendation from the treating physician in consultation with the insured; and

(B) The results of a functional limit test.

(2) As used in this section, "functional limit test" includes without limitation the insured's:

(A) Medical history, including prior use of orthotic devices or prosthetic devices if applicable;

(B) Current condition, including the status of the musculoskeletal system and the nature of other medical problems; and

(C) Desire to:

(i) Ambulate with respect to lower-limb orthotic devices or prosthetic devices; or

(ii) Maximize upper-limb function with respect to upper-limb orthotic devices or prosthetic devices.

(3) A denial or limitation of coverage based on lack of medical necessity is subject to external review under State Insurance Department Rule 76, the Arkansas External Review Regulation.

(c) A health benefit plan:

(1) May require prior authorization for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service in the same manner that prior authorization is required for any other covered benefit;

(2) May impose copayments, deductibles, or coinsurance amounts for an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service if the amounts are no greater than the copayments,

deductibles, or coinsurance amounts that apply to other benefits under the health benefit plan;

(3) When the replacement or repair is necessitated by anatomical change or normal use, shall cover the necessary repair and necessary replacement of an orthotic device or a prosthetic device subject to copayments, coinsurance, and deductibles that are no more restrictive than the copayments, coinsurance, and deductibles that apply to other benefits under the health benefit plan, unless the repair or replacement is necessitated by misuse or loss; and

(4) Shall include a requirement that an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service be prescribed by a licensed doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine and provided by a doctor of medicine, a doctor of osteopathy, a doctor of podiatric medicine, an orthotist, or a prosthetist licensed by the State of Arkansas.

(d) Coverage of an orthotic device, an orthotic service, a prosthetic device, or a prosthetic service may be made subject to but no more restrictive than the provisions of the health benefit plan that apply to other benefits under the health benefit plan.

(e) The commissioner may:

(1) Issue a rule governing payment standards for health benefit plans under subdivision (a)(1) of this section; and

(2) Adopt necessary rules to enforce this section.

History. Acts 2009, No. 950, § 2; 2013, No. 1233, §§ 1, 2.

Amendments. The 2013 amendment substituted "allowable" for "allowables" in (a)(1); and added (e).

23-99-418. Coverage for autism spectrum disorders required — Definitions.

(a) As used in this section:

(1) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications by a board-certified behavior analyst using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;

(2) "Autism services provider" means a person, entity, or group that provides diagnostic evaluations and treatment of autism spectrum disorders, including licensed physicians, licensed psychiatrists, licensed speech therapists, licensed occupational therapists, licensed physical therapists, licensed psychologists, and board-certified behavior analysts;

(3) "Autism spectrum disorder" means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including:

(A) Autistic disorder;

(B) Asperger's disorder; and

(C) Pervasive developmental disorder not otherwise specified;

(4) "Board-certified behavior analyst" means an individual certified by the nationally accredited Behavior Analyst Certification Board, a nationally accredited nongovernmental agency that certifies individuals who have completed academic, examination, training, and supervision requirements in applied behavior analysis;

(5)(A) "Diagnosis" means medically necessary assessment, evaluations, or tests to diagnose whether or not an individual has an autism spectrum disorder.

(B) Diagnostic evaluations do not need to be completed concurrently to diagnose autism spectrum disorder;

(6) "Evidence-based treatment" means treatment subject to research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders;

(7)(A) "Health benefit plan" means any group or blanket plan, policy, or contract for healthcare services issued or delivered in this state by healthcare insurers, including indemnity and managed care plans and the plans providing health benefits to state and public school employees under § 21-5-401 et seq., but excluding individual major medical plans and plans providing healthcare services under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.

(B) "Health benefit plan" does not include an accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policy;

(8) "Healthcare insurer" means any insurance company, hospital and medical service corporation, or health maintenance organization issuing or delivering health benefit plans in this state and subject to any of the following laws:

(A) The insurance laws of this state;

(B) Section 23-75-101 et seq., pertaining to hospital and medical service corporations; and

(C) Section 23-76-101 et seq., pertaining to health maintenance organizations;

(9) "Medically necessary" means reasonably expected to do the following:

(A) Prevent the onset of an illness, condition, injury, or disability;

(B) Reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or

(C) Assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age;

(10) "Pharmacy care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications;

(11) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices;

(12) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices;

(13) "Therapeutic care" means services provided by licensed speech therapists, occupational therapists, or physical therapists; and

(14) "Treatment" includes:

(A) The following care prescribed, provided, or ordered for a specfic individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary and evidence-based, including without limitation:

(i) Applied behavior analysis when provided by or supervised by a board-certified behavior analyst;

(ii) Pharmacy care;

(iii) Psychiatric care;

(iv) Psychological care;

(v) Therapeutic care; and

(vi) Equipment determined necessary to provide evidence-based treatment; and

(B) Any care for an individual with autism spectrum disorder that is determined by a licensed physician to be:

(i) Medically necessary; and

(ii) Evidence-based.

(b) To the extent that the diagnosis and treatment of autism spectrum disorders are not already covered by a health benefit plan, coverage under this section shall be included in a health benefit plan that is delivered, executed, issued, amended, adjusted, or renewed in this state on or after October 1, 2011.

(c) Applied behavior analysis services shall:

(1) Have an annual limitation of fifty thousand dollars ($50,000); and

(2) Be limited to children under eighteen (18) years of age.

(d)(1) The coverage required by this section is not subject to:

(A) Any limits on the number of visits an individual may make to an autism services provider; or

(B) Dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to a physical illness generally under a health benefit plan.

(2) The coverage may be subject to other general exclusions and limitations of the health insurance plan, including without limitation coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of healthcare services, including review of medical necessity, case management, and other managed care provisions.

(e) This section does not limit benefits that are otherwise available to an individual under a health benefit plan.

(f) Coverage for treatment under this section shall not be denied on the basis that the treatment is habilitative in nature.

(g)(1) If an individual is receiving treatment for an autism spectrum disorder, an insurer shall not request a review of the medical necessity of the treatment for autism spectrum disorder to a greater extent than it does for other illnesses covered in the policy.

(2) The cost of obtaining the review shall be borne by the insurer.

(h)(1) This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, an individualized education program under the Individuals with Disabilities Education Act, Pub. L. No. 101-476, or an individualized service plan.

(2) In accordance with the Individuals with Disabilities Education Act, Pub. L. No. 101-476, nothing in this section relieves an insurer from an otherwise valid obligation to provide or to pay for services provided to an individual with a disability.

(i) On and after January 1, 2014:

(1) To the extent that this section requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the health benefit plan is offered by a healthcare insurer in this state through the state medical exchange; and

(2) This section continues to apply to plans offered outside the state medical exchange.

History. Acts 2011, No. 196, § 1.

A.C.R.C. Notes. Acts 2014, No. 295, § 17, provided: "AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Analysts as described in Arkansas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds."

U.S. Code. The Individuals with Disabilities Education Act, referred to in this section, is codified primarily as 20 U.S.C. § 1400 et seq. The Patient Protection and Affordable Care Act, referred to in this section, is codified throughout Title 42 of the U.S. Code, but primarily as 42 USCS § 18001, et seq.

23-99-419. Gastric pacemakers.

(a) As used in this section:

(1) "Gastric pacemaker" means a medical device that:

(A) Uses an external programmer and implanted electrical leads to the stomach; and

(B) Transmits low-frequency, high-energy electrical stimulation to the stomach to entrain and pace the gastric slow waves to treat gastroparesis; and

(2)(A) "Gastroparesis" means a neuromuscular stomach disorder in which food empties from the stomach more slowly than normal.

(B) In most people, undigested food moves from the stomach into the duodenum and small intestine within two (2) to four (4) hours after eating.

(C) In contrast, a patient who has gastroparesis will retain a significant amount of food in his or her stomach hours after eating.

(D) A patient with gastroparesis experiences a variety of upper gastrointestinal symptoms that prevents him or her from eating normally and that may lead to dehydration, weight loss, and eventually life-threatening electrolyte imbalances and malnutrition.

(E) Moreover, delayed stomach emptying interferes with oral drug absorption and, in patients with diabetes mellitus, prevents effective control of blood glucose levels.

(F) The Enterra Therapy for gastroparesis received humanitarian device exemption approval from the Food and Drug Administration in March 2000.

(G) The humanitarian device exemption authorizes Medtronic to market Enterra Therapy for the treatment of chronic intractable, drug-refractory, nausea and vomiting secondary to gastroparesis of diabetic or idiopathic etiology.

(H) The effectiveness of Enterra Therapy for this use has not been demonstrated.

(I) Enterra Therapy may be used only in medical centers in which an institutional review board has approved use of the device.

(J)(i) When the battery in a neurostimulator runs down, the physician will obtain prior authorization from the health insurance company and approval for a replacement surgery and then schedule a procedure.

(ii) During the surgery, the physician will remove the neurostimulator and implant a new one.

(iii) The implanted leads will also be checked to make sure they are working properly.

(iv) If the leads are working properly, the new neurostimulator will be connected to the leads that are already in place.

(v) If the leads are not working as they should be, they will also be replaced.

(b) Except as provided under subsection (c) or subsection (d) of this section, a health benefit plan that is issued for delivery, delivered, renewed, or otherwise contracted for in this state shall provide coverage for gastric pacemakers.

(c) Eligible charges and limits of or exclusions from coverage under subsection (b) of this section shall be based on medical necessity or the health benefit plan's coverage criteria for other medical services.

(d) A health benefit plan may:

(1) Require prior authorization for a gastric pacemaker in the same manner that prior authorization is required for any other covered benefit; and

(2) Impose copayments, deductibles, or coinsurance amounts for a gastric pacemaker if the amounts are no greater than the copayments,

deductibles, or coinsurance amounts that apply to other benefits under the health benefit plan.

History. Acts 2011, No. 1042, § 1.

23-99-420. Prior authorization.

(a) As used in this section:

(1) "Fail first" means a protocol by a healthcare insurer requiring that a healthcare service preferred by a healthcare insurer shall fail to help a patient before the patient receives coverage for the healthcare service ordered by the patient's healthcare provider;

(2) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in the state;

(3)(A) "Healthcare insurer" means an insurance company, a health maintenance organization, and a hospital and medical service corporation.

(B) "Healthcare insurer" does not include workers' compensation plans or Medicaid;

(4) "Healthcare provider" means a doctor of medicine, a doctor of osteopathy, or another healthcare professional acting within the scope of practice for which he or she is licensed;

(5) "Healthcare service" means a healthcare procedure, treatment, service, or product, including without limitation prescription drugs and durable medical equipment ordered by a healthcare provider;

(6) "Medicaid" means the state-federal medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.;

(7) "Prior authorization" means the process by which a healthcare insurer or a healthcare insurer's contracted private review agent determines the medical necessity or medical appropriateness, or both, of otherwise covered healthcare services before the rendering of the healthcare services, including without limitation:

(A) Preadmission review;

(B) Pretreatment review;

(C) Utilization review;

(D) Case management; and

(E) Any requirement that a patient or healthcare provider notify the healthcare insurer or a utilization review agent before providing a healthcare service;

(8)(A) "Private review agent" means a nonhospital-affiliated person or entity performing utilization review on behalf of:

(i) An employer of employees in the State of Arkansas; or

(ii) A third party that provides or administers hospital and medical benefits to citizens of this state, including:

(a) A health maintenance organization issued a certificate of authority under and by virtue of the laws of the State of Arkansas; and

(b) A health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts, or benefits in this state.

(B) "Private review agent" includes a healthcare insurer if the healthcare insurer performs prior authorization determinations.

(C) "Private review agent" does not include automobile, homeowner, or casualty and commercial liability insurers or their employees, agents, or contractors;

(9) "Self-insured health plan for employees of governmental entity" means a trust established under §§ 14-54-101 and 25-20-104 to provide benefits such as accident and health benefits, death benefits, dental benefits, and disability income benefits; and

(10) "Step therapy" means a protocol by a healthcare insurer requiring that a patient not be allowed coverage of a prescription drug ordered by the patient's healthcare provider until other less expensive drugs have been tried.

(b) The purpose of this section is to ensure that prior authorization determination protocols safeguard a patient's best interests.

(c)(1) An adverse prior authorization determination made by a utilization review agent shall be based on the medical necessity or appropriateness of the healthcare services and shall be based on written clinical criteria.

(2) An adverse prior authorization determination shall be made by a qualified healthcare professional.

(d) This section applies to a healthcare insurer whether or not the healthcare insurer is acting directly or indirectly or through a private review agent and to a self-insured health plan for employees of governmental entities. However, a self-insured plan for employees of governmental entities is not subject to subdivision (g)(4)(C) of this section or oversight by the Arkansas State Medical Board, State Board of Health, or the State Insurance Department.

(e) If the patient or the patient's healthcare provider, or both, receive verbal notification of the adverse prior authorization determination, the qualified healthcare professional who makes an adverse prior authorization determination shall provide the information required for the written notice under subdivision (g)(1) of this section.

(f) Written notice of an adverse prior authorization determination shall be provided to the patient's healthcare provider requesting the prior authorization by fax or hard copy letter sent by regular mail, as requested by the patient's healthcare provider.

(g) The written notice required under subsection (e) of this section shall include:

(1)(A) The name, title, address, and telephone number of the healthcare professional responsible for making the adverse determination.

(B) For a physician, the notice shall identify the physician's board certification status or board eligibility.

(C) The notice under this subsection shall identify each state in which the healthcare professional is licensed and the license number issued to the professional by each state;

(2) The written clinical criteria, if any, and any internal rule, guideline, or protocol on which the healthcare insurer relied when making the adverse prior authorization determination and how those provisions apply to the patient's specific medical circumstance;

(3) Information for the patient and the patient's healthcare provider through which the patient or healthcare provider may request a copy of any report developed by personnel performing the utilization review that led to the adverse prior authorization determination; and

(4)(A) Information explaining to the patient and the patient's healthcare provider the right to appeal the adverse prior authorization determination.

(B) The information required under subdivision (g)(4)(A) of this section shall include instructions concerning how an appeal may be perfected and how the patient and the patient's healthcare provider may ensure that written materials supporting the appeal will be considered in the appeal process.

(C) The information required under subdivision (g)(4)(A) of this section shall include addresses and telephone numbers to be used by healthcare providers and patients to make complaints to the Arkansas State Medical Board, the State Board of Health, and the State Insurance Department.

(h)(1) When a healthcare service for the treatment or diagnosis of any medical condition is restricted or denied for use by prior authorization or step therapy or a fail first protocol in favor of a healthcare service preferred by the healthcare insurer, the patient's healthcare provider shall have access to a clear and convenient process to expeditiously request an override of that restriction or denial from the healthcare insurer.

(2) Upon request, the patient's healthcare provider shall be provided contact information, including a phone number, for the person or persons who should be contacted to initiate the request for an expeditious override of the restriction or denial.

(i) Requested healthcare services shall be deemed preauthorized if a healthcare insurer or self-insured health plan for employees of governmental entities fails to comply with this section.

(j)(1) On and after January 1, 2014, to establish uniformity in the submission of prior authorization forms, a healthcare insurer shall utilize only a single standardized prior authorization form for obtaining a prior authorization in written or electronic form for prescription drug benefits.

(2) A healthcare insurer may make the form required under subdivision (j)(1) of this section accessible through multiple computer operating systems.

(3) The prior authorization form required under subdivision (j)(1) of this section shall:

(A) Not exceed two (2) pages; and

(B) Be designed to be submitted electronically from a prescribing provider to a healthcare insurer.

(4) This subsection does not prohibit a prior authorization by verbal means without a form.

(5) If a healthcare insurer fails to use or accept the prior authorization form developed under this subsection or fails to respond as soon as reasonably possible but no later than seventy-two (72) hours after receipt of a completed prior authorization request using the form developed under this subsection, the prior authorization request is granted.

(6)(A) On and after January 1, 2014, each healthcare insurer shall submit its prior authorization form to the State Insurance Department to be kept on file.

(B) A copy of a subsequent replacement or modification of a healthcare insurer's prior authorization form shall be filed with the department within fifteen (15) days before the prior authorization form is used or before implementation of the replacement or modification.

History. Acts 2011, No. 1155, § 1; 2013, No. 338, § 1.

Amendments. The 2013 amendment added (j).

Subchapter 5 — Arkansas Mental Health Parity Act of 2009

SECTION.
23-99-501. Short title.
23-99-502. Legislative findings and intent.
23-99-503. Definitions.
23-99-504. Exclusions.
23-99-505. Increased cost exemption.
23-99-506. Parity requirements.
23-99-507. Medical necessity.
23-99-508. Permitted provisions.
23-99-509. Applicability.
23-99-510. Rules and regulations.
23-99-511. Enforcement.
23-99-512. Out-of-network providers.

23-99-501. Short title.

This subchapter shall be known and may be cited as the "Arkansas Mental Health Parity Act of 2009".

History. Acts 1997, No. 1020, § 1; 2009, No. 1193, § 1.

Amendments. The 2009 amendment inserted "of 2009."

23-99-502. Legislative findings and intent.

It is the intent of this state that if a health benefit plan provides insurance coverage for a mental illness or substance abuse disorder, the treatment of the mental illness or substance abuse disorder shall be as available as and at parity with that for other medical illnesses.

History. Acts 1997, No. 1020, § 2; 2009, No. 1193, § 2.

Amendments. The 2009 amendment rewrote the section.

23-99-503. Definitions.

As used in this subchapter:

(1) "Carve-out arrangement" means an arrangement in which a healthcare insurer contracts with a separate person or entity to arrange for the delivery of specific types of healthcare benefits under a health benefit plan;

(2) "Commissioner" means the Insurance Commissioner;

(3) "Financial requirements" means copayments, deductibles, out-of-network charges, out-of-pocket contributions or fees, annual limits, lifetime aggregate limits imposed on individual patients, and other patient cost-sharing amounts;

(4) "Health benefit plan" means any group or blanket plan, policy, or contract for healthcare services issued or delivered in this state by healthcare insurers, including indemnity and managed care plans and the plans providing health benefits to state and public school employees pursuant to § 21-5-401 et seq., but excluding plans providing health care services pursuant to Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(5) "Healthcare insurer" means any insurance company, hospital and medical service corporation, or health maintenance organization issuing or delivering health benefit plans in this state and subject to any of the following laws:

(A) The Arkansas Insurance Code;

(B) Section 23-75-101 et seq., pertaining to hospital and medical service corporations;

(C) Section 23-76-101 et seq., pertaining to health maintenance organizations; and

(D) Any successor law of the foregoing;

(6)(A) "Mental illnesses" and "substance use disorders" mean those illnesses and disorders that are covered by a health benefit plan listed in the International Classification of Diseases manual and the Diagnostic and Statistical Manual of Mental Disorders.

(B) Unless specifically otherwise stated, "mental illness" includes substance use disorders;

(7) "Person" or "entity" means and includes, individually and collectively, any individual, corporation, partnership, firm, trust, association, voluntary organization, or any other form of business enterprise or legal entity; and

(8) "Small employer" means any person or entity actively engaged in business who, on at least fifty percent (50%) of its working days during the preceding year, employed no more than fifty (50) eligible employees.

History. Acts 1997, No. 1020, § 3; 2009, No. 1193, §§ 3, 4.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

Amendments. The 2009 amendment, in (4), inserted "and the plans providing health benefits to state and public school employees pursuant to § 21-5-401 et seq." and deleted "to state employees or" follow-

ing "services"; inserted (6)(B), redesignated the existing text accordingly, and in (6)(A), substituted "substance abuse disorders" for "developmental disorders" and inserted "that are covered by a health benefit plan."

23-99-504. Exclusions.

This subchapter does not apply to:

(1) Dental insurance plans;

(2) Vision insurance plans;

(3) Specified-disease insurance plans;

(4) Accidental injury insurance plans;

(5) Long-term care plans;

(6) Disability income plans;

(7) Individual health benefit plans if the healthcare insurers offer individuals who satisfy the healthcare insurer's underwriting standards the option of purchasing a plan that, other than being optional, meets all the other requirements of this subchapter;

(8) Health benefit plans for small employers if the healthcare insurers offer purchasers the option of purchasing a plan that, other than being optional, meets all the other requirements of this subchapter; and

(9) Medicare supplement plans, as subject to section 1882(g)(1) of the Social Security Act.

History. Acts 1997, No. 1020, § 8; 2009, No. 1193, § 5.

Amendments. The 2009 amendment substituted "if the healthcare insurers offer" for "provided that healthcare insurers shall offer" in (7) and (8); inserted "who satisfy the healthcare insurer's underwriting standards" in (8); and made related and minor stylistic changes.

U.S. Code. Section 1882(g)(1) of the Social Security Act, referred to in (9), is codified as 42 U.S.C. § 1395ss(g)(1).

23-99-505. Increased cost exemption.

(a)(1) This subchapter does not apply to a health benefit plan during the health benefit plan's following health benefit plan year if the application of this subchapter to the health benefit plan in a health benefit plan year resulted in an increase in the actual costs of coverage with respect to medical and surgical benefits and mental illness benefits under the health benefit plan as determined and certified under subsection (b) of this section by an amount that exceeds:

(A) Two percent (2%) for the first health benefit plan year in which this section is applied; or

(B) One percent (1%) for each subsequent health benefit plan year.

(2) The exemption provided by subdivision (a)(1) of this section applies to a health benefit plan for one (1) year.

(3) A healthcare insurer may elect to continue to apply mental health parity under this subchapter to its health benefit plans regardless of any increase in its total costs of coverage.

(b)(1) A determination under this section of increases to the actual costs of coverage of a health benefit plan shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries.

(2) The determination shall be in a written report prepared by the actuary.

(3) The report and all underlying documentation relied upon by the actuary shall be maintained by the healthcare insurer for a period of six (6) years following the notification required by subsection (d) of this section.

(c) To obtain an exemption under this section, a healthcare insurer shall make the increased cost determination required by this section after the health benefit plan has complied with this section for the first six (6) months of the health benefit plan year.

(d)(1) A healthcare insurer that elects to claim an exemption for a qualifying health benefit plan under this section based upon a certification under subsection (b) of this section shall promptly notify the Insurance Commissioner, the policyholder or contract holder, and the certificate holders, subscribers, and enrollees covered by the health benefit plan of its election.

(2) The notification to the commissioner under subdivision (d)(1) of this section shall include:

(A) A description of the number of covered lives under the health benefit plan at the time of the notification and, if applicable, at the time of any prior election of the increased cost exemption under this section; and

(B) For the current and previous health benefit plan year:

(i) A description of the actual total costs of coverage for medical and surgical benefits and mental illness benefits under the health benefit plan; and

(ii) The actual total costs of coverage with respect to mental illness benefits under the health benefit plan.

(3)(A) A notification under this subsection is confidential.

(B) The commissioner shall make available upon request, but not more than annually, an anonymous itemization of notifications under this section that includes a summary of the data received under subdivision (d)(2) of this section.

(e) To determine compliance with this section, the commissioner may audit the books and records of a healthcare insurer relating to an exemption, including without limitation any actuarial reports prepared pursuant to subsection (b) of this section during the six-year period following the notification required by subsection (d) of this section.

(f) The commissioner may promulgate rules to implement this section.

History. Acts 1997, No. 1020, § 9; Acts 2009, No. 1193, § 6.

A.C.R.C. Notes. The amendment of this section by Acts 2009, No. 1193, § 6, omitted former subsection (b) without striking through the language to indicate its repeal.

Amendments. The 2009 amendment rewrote (a); and added (b) through (f).

23-99-506. Parity requirements.

(a) Except as provided in § 23-99-504, a health benefit plan that provides benefits for the diagnosis and treatment of mental illnesses shall provide the benefits under the same terms and conditions as provided for covered benefits offered under the health benefit plan for the treatment of other medical illnesses and conditions, including without limitation:

(1) The duration or frequency of coverage;

(2) The dollar amount of coverage; or

(3) Financial requirements.

(b) This subchapter does not:

(1) Require equal coverage between treatments for a mental illness with coverage for preventive care;

(2) Prohibit a healthcare insurer from:

(A) Negotiating separate reimbursement rates and service delivery systems, including without limitation a carve-out arrangement;

(B) Managing the provision of mental health benefits for mental illnesses by common methods used for other medical conditions, including without limitation preadmission screening, prior authorization of services, or other mechanisms designed to limit coverage of services or mental illnesses to mental illnesses that are deemed medically necessary;

(C) Limiting covered services to covered services authorized by the health benefit plan, if the limitations are made in accordance with this subchapter;

(D) Using separate but equal cost-sharing features for mental illnesses; or

(E) Using a single lifetime or annual dollar limit as applicable to other medical illness; and

(3) Include a Medicare or Medicaid plan or contract or any privatized risk or demonstration program for Medicare or Medicaid coverage.

History. Acts 1997, No. 1020, § 4; 2009, No. 1193, § 7.

A.C.R.C. Notes. The amendment of this section by Acts 2009, No. 1193, § 7, omitted "or developmental disorders as for other medical illness" at the end of former subdivision (c)(2)(D) without striking through the language to indicate its repeal.

Amendments. The 2009 amendment rewrote (a) and (b), redesignated them as present (a), and redesignated the subsequent subsection accordingly; in (b)(2)(B), deleted "and the mental health treatment of those with developmental disorders" following "benefits for mental illnesses," and substituted "services or mental illnesses" for "and developmental disorders"; in (b)(2)C), substituted "benefit plan" for "insurance policy"; and made minor stylistic changes.

23-99-507. Medical necessity.

(a) The criteria for medical necessity determinations for mental illness made under a health benefit plan shall be made available by the healthcare insurer in accordance with rules established by the Insur-

ance Commissioner to any current or potential covered individual or contracting provider upon request.

(b) On request, the reason for a denial of reimbursement or payment for services to diagnose or treat mental illness under a health benefit plan shall be made available by the healthcare insurer to a covered individual in accordance with the rules of the commissioner.

History. Acts 1997, No. 1020, § 5; 2009, No. 1193, § 8.

Amendments. The 2009 amendment rewrote the section.

23-99-508. Permitted provisions.

(a) A healthcare insurer may at the healthcare insurer's option provide coverage for a health service, such as intensive case management, community residential treatment programs, or social rehabilitation programs, that is used in the treatment of mental illnesses but is generally not used for other injuries, illnesses, and conditions if the other requirements of this subchapter are met.

(b) Healthcare insurers providing educational remediation may, but are not required to, comply with the terms of this subchapter in regard to the treatment or remediation.

(c) A healthcare insurer may provide coverage for a health service, including without limitation physical rehabilitation or durable medical equipment, which generally is not used in the diagnosis or treatment of serious mental illnesses but is used for other injuries, illnesses, and conditions if the other requirements of this subchapter are met.

(d) A healthcare insurer may utilize common utilization management protocols, including without limitation preadmission screening, prior authorization of service, or other mechanisms designed to limit coverage of service for mental illness to individuals whose diagnosis or treatment coverage is considered medically necessary although the protocols are not used in conjunction with other medical illnesses or conditions covered by the health benefit plan.

History. Acts 1997, No. 1020, § 6; 2009, No. 1193, § 9.

Amendments. The 2009 amendment deleted "or developmental disorders" following "mental illnesses" in (a); deleted "chemical dependency treatment or" following "providing" in (b); added (d); and made related and minor stylistic changes.

23-99-509. Applicability.

(a) On or after October 3, 2009, this subchapter shall apply to health benefit plans on the health benefit plans' anniversaries or start dates but in no event later than one (1) year after October 3, 2009.

(b) If a health benefit plan provides coverage or benefits to an Arkansas resident, the health benefit plan shall be deemed to be delivered in this state within the meaning of this subchapter, regardless of whether the healthcare insurer or other entity that provides the coverage is located within or outside Arkansas.

History. Acts 1997, No. 1020, § 7; 2009, No. 1193, § 10.

Amendments. The 2009 amendment substituted "October 3, 2009" for "August 1, 1997" twice in (a); and inserted "health benefit" in (a) and (b).

23-99-510. Rules and regulations.

The Insurance Commissioner shall enforce this subchapter and shall promulgate necessary rules and regulations for carrying out this subchapter.

History. Acts 1997, No. 1020, § 10.

23-99-511. Enforcement.

The Insurance Commissioner shall have all the powers to enforce this subchapter as are granted to the commissioner elsewhere in the Arkansas Insurance Code.

History. Acts 1997, No. 1020, § 11.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-99-512. Out-of-network providers.

In the case of a health benefit plan that provides both medical benefits and mental illness benefits, if the health benefit plan provides coverage for medical benefits provided by out-of-network providers, the health benefit plan shall provide coverage for mental illness benefits provided by out-of-network providers pursuant to this subchapter.

History. Acts 2009, No. 1193, § 11.

Subchapter 6 — Dental Point of Service Act.

SECTION.
23-99-601. Short title.
23-99-602. Legislative findings.
23-99-603. Definitions.
23-99-604. Coverage for out-of-network dentists.
23-99-605. Rules and regulations.
23-99-606. Insurance Commissioner's enforcement authority.
23-99-607. Duty of Attorney General to defend.
23-99-608. Applicability of subchapter.

23-99-601. Short title.

This subchapter shall be cited as the "Dental Point of Service Act".

History. Acts 1999, No. 1232, § 1.

23-99-602. Legislative findings.

The General Assembly finds that the quality of dental care is improved through patient choice among dentists and that utilization of dentists varies less than utilization of other providers. Patients should have the freedom to go to dentists outside their managed care network

when the carrier is not required to pay the dentist more than it pays in-network dentists. Therefore, health carriers should be required to offer a point-of-service option for dental care.

History. Acts 1999, No. 1232, § 2.

23-99-603. Definitions.

As used in this subchapter:

(1) "Commissioner" means the Insurance Commissioner;

(2) "Covered person" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan;

(3) "Dentist" means a person licensed under the Arkansas Dental Practice Act, § 17-82-101 et seq.;

(4) "Healthcare service" means that service offered or provided by the healthcare providers within the scope of their practice and relating to the prevention, cure, or treatment of illness or disease;

(5) "Health carrier" means any insurance company, health maintenance organization, or hospital and medical service corporation as defined in § 23-75-101, subject to the following laws:

(A) The Arkansas Insurance Code;

(B) Provisions pertaining to health maintenance organizations, § 23-76-101 et seq.; and

(C) Any successor laws of the foregoing; and

(6) "Health plan" means any policy, contract, or agreement offered by a health carrier to provide, reimburse, or pay for healthcare services except the following:

(A) Workers' compensation coverage;

(B) Self-funded or self-insured health plans, unless the plan is established or maintained for employees of a governmental entity; and

(C) A policy, contract, or agreement that limits coverage for dental services in connection with the treatment of a covered accidental injury or the treatment of a nondental physiological condition.

History. Acts 1999, No. 1232, § 3.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-99-604. Coverage for out-of-network dentists.

(a) Every health plan which provides dental benefits issued, renewed, extended, or modified by a health carrier shall also include a point-of-service option which provides benefits to covered persons through dentists who are not members of the health carrier's provider network.

(b)(1) The benefits offered under this option shall be the same as those offered through the network.

(2) The rate of reimbursement for out-of-network dentists may differ from the rate of reimbursement for noncapitated dentists in the network but by no more than ten percent (10%).

(3) The copayment, coinsurance, and other cost-sharing features may differ between the use of in-network and out-of-network dentists but by no more than twenty-five percent (25%).

(c) The out-of-network dentist may bill the patient for the balance of any charges which are not otherwise reimbursed by the health carrier. However, if after a request by the covered person in advance of treatment the provider fails to disclose a reasonable range of the total of charges for nonemergency services to be provided, the covered person shall not be liable for such additional charges.

(d) The health carrier shall fully disclose to the covered person, in clear, understandable language, the terms and conditions of this option. This requirement may be satisfied by the health carrier's providing to the employer or other purchaser of the health plan presentation materials for dissemination to covered persons.

History. Acts 1999, No. 1232, § 4.

23-99-605. Rules and regulations.

Within one hundred twenty (120) days of July 30, 1999, the Insurance Commissioner shall promulgate necessary rules and regulations for carrying out this subchapter, giving maximum possible effect to the General Assembly's intent to promote quality medical care through increased choice.

History. Acts 1999, No. 1232, § 5.

23-99-606. Insurance Commissioner's enforcement authority.

The Insurance Commissioner shall enforce this subchapter, using the powers granted to the commissioner elsewhere in the Arkansas Insurance Code.

History. Acts 1999, No. 1232, § 6.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-99-607. Duty of Attorney General to defend.

In any legal proceeding in which the validity of this subchapter is challenged, the Attorney General shall defend the subchapter regardless of the state agency or official named as an official party.

History. Acts 1999, No. 1232, § 7.

23-99-608. Applicability of subchapter.

This subchapter applies to health plans issued, renewed, extended, or modified by a health carrier on or after July 30, 1999. "Renewed, extended, or modified" shall include a change in premium or other financial term.

History. Acts 1999, No. 1232, § 8.

Subchapter 7 — Grievance Systems and Quality Assessment and Improvement Systems

SECTION.
23-99-701. Legislative findings.
23-99-702. Definitions.
23-99-703. Grievance system.
23-99-704. Quality assessment and improvement systems.
23-99-705. Applicability and scope.
23-99-706. Enforcement and penalties.

Effective Dates. Acts 1999, No. 1200, § 10: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that those dramatic changes affecting health care delivery to the citizens of Arkansas require the state to oversee the quality of health care processes and outcomes to protect its citizens and to improve their quality of life. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

23-99-701. Legislative findings.

The General Assembly finds and declares the following:

(1) The State of Arkansas has an interest in protecting its citizens and in pursuing reasonable means to improve the quality of life and health of those citizens;

(2) In the healthcare field, the State of Arkansas has traditionally regulated utilization review as well as the quality of care provided by healthcare providers, insurance companies, and organizations which assume the risk of providing healthcare services for citizens of this state, such as health maintenance organizations; and

(3) Dynamic changes in how health care is delivered to citizens of this state require the state to oversee the quality of healthcare processes and outcomes resulting from health carriers and networks.

History. Acts 1999, No. 1200, § 1.

23-99-702. Definitions.

As used in this subchapter:

(1) "Commissioner" means the Insurance Commissioner;

(2) "Director" means the Director of the Department of Health;

(3) "Healthcare services" means any services included in the furnishing to any individual of medical or dental care, hospitalization, or services incident to the furnishing of care or hospitalization, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing, or healing human illness or injury;

(4) "Health carrier" means any person who undertakes to provide or arrange for one (1) or more managed care plans;

(5) "Managed care plan" means any arrangement whereby a health carrier undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any healthcare services, and at least part of the arrangement consists of arranging for or the provision of healthcare services as distinguished from mere indemnifications against the cost of the healthcare services on a prepaid basis through insurance or otherwise; and

(6) "Network" when used to describe a provider of health services, including, but not limited to, a hospital, physician, home health agency, pharmacy, etc., means that the provider has a participation agreement in effect with a health carrier, directly or through another entity, to provide health services to covered persons.

History. Acts 1999, No. 1200, § 2.

23-99-703. Grievance system.

(a) All health carriers and networks shall make arrangements for handling and resolving grievances.

(b) Each health carrier and network shall:

(1) Maintain records of grievances filed with the health carrier and network concerning the quality of healthcare services; and

(2) Submit in the form and manner prescribed by the Director of the Department of Health a periodic report which shall include:

(A) A written description of the processes and procedures for resolving grievances; and

(B) The total number of grievances handled through the grievance system, including a compilation of the dates of the grievances, the reason for the grievances, and resolutions of each grievance.

(c) In consultation with the Insurance Commissioner, the director may promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to carry out the provisions of this subchapter to enable the state to be properly informed of quality issues within the state and to adequately respond to any quality concerns expressed through grievances.

History. Acts 1999, No. 1200, § 3.

23-99-704. Quality assessment and improvement systems.

(a) Each health carrier and network shall:

(1) Make arrangements for measuring and improving the quality of healthcare services;

(2) Maintain quality assessment and improvement programs and records measuring the outcomes of healthcare services; and

(3) Submit to the Director of the Department of Health in the time, manner, and form prescribed the following information:

(A) A written description of any quality assessment and quality improvement systems; and

(B) Findings of relevant quality data as determined by the director.

(b) In consultation with the Insurance Commissioner, the director may promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to carry out the provisions of this subchapter to enable the state to be properly informed of quality issues within the state and to adequately respond to any quality concerns found through the outcome data.

(c) The provisions of § 16-46-105 and § 20-9-501 et seq. shall apply to all records maintained pursuant to this subchapter.

History. Acts 1999, No. 1200, § 4.

23-99-705. Applicability and scope.

(a) This subchapter shall not apply to disability income, specified disease, Medicare supplement, hospital indemnity, accident-only policies, long-term care, short-term limited duration insurance, and all other supplemental insurance products issued by health carriers.

(b) In terms of the Director of the Department of Health's regulatory authority pursuant to §§ 23-99-703 and 23-99-704, such authority shall apply to the quality of care provided by health carriers and networks operating in this state and shall not apply to the benefits offered by any health carrier and network or to the administration of such benefits.

History. Acts 1999, No. 1200, § 5.

23-99-706. Enforcement and penalties.

The Director of the Department of Health shall have the power to implement and enforce this subchapter.

History. Acts 1999, No. 1200, § 6.

Subchapter 8 — Enforcement of any Willing Provider Laws

SECTION.
23-99-801. Application and intent.
23-99-802. Definitions.
SECTION.
23-99-803. Agency enforcement.

A.C.R.C. Notes. Acts 2005, No. 490, the Patient Protection Act of 2005, will not become effective pursuant to section 2 of that act because the 8th Circuit Court of Appeals affirmed the part of the district court ruling that dissolved the permanent injunction barring enforcement of the Patient Protection Act of 1995, § 23-99-201 et seq., as it applies to health insurers of private, insured ERISA plans. See Prudential Ins. Co. of Am. v. Nat'l Park Med. Ctr., Inc., 4:95CV514JMM, 2004 U.S. Dist. LEXIS 2906 (E.D. Ark. Feb. 12, 2004), aff'd in part, rev'd in part, 413 F.3d 897 (8th Cir. 2005).

Acts 2005, No. 491, §§ 1 and 2, provided: "SECTION 1. Civil penalties. To the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any person adversely affected by a violation of the Patient Protection Act of 2005 may sue in a court of competent jurisdiction for injunctive relief against the health insurer and, upon prevailing, shall, in addition to injunctive relief, recover damages of not less than one thousand dollars ($1,000), attorney's fees, and costs.

"SECTION 2. Validity and construction.

"(a) A health benefit plan delivered or issued for delivery to any person in this state in violation of the Patient Protection Act of 2005 but otherwise binding on the health insurer, shall be held valid, but shall be construed as provided in the Patient Protection Act of 2005.

"(b) Any health benefit plan or related policy, rider, or endorsement issued and otherwise valid that contains any condition, omission, or provision not in compliance with the requirements of the Patient Protection Act of 2005 shall not be rendered invalid because of the noncompliance, but shall be construed and applied in accordance with such condition, omission, or provision as would have applied if it had been in full compliance with the Patient Protection Act of 2005."

Acts 2005, No. 491, § 7, provided: "Sections 3, 4, 5 and 6 of this Act shall take effect and apply to any of the state's any willing provider laws regardless of whether the Patient Protection Act of 2005 becomes effective."

Acts 2005, No. 960, § 1, provided: "23-99-207. Civil penalties. To the extent permitted by ERISA, the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., any provider adversely affected by a violation of this subchapter may sue in a circuit court only for injunctive relief against the health care insurer but not damages. The prevailing party shall be allowed a reasonable attorney's fee and costs."

Acts 2005, No. 2238, § 2, provided: "(4) 'Health care provider' or 'provider' means an individual or entity licensed by the State of Arkansas to provide health care services, limited to the following types of providers:

"(A) Advanced practice nurses;

"(B) Athletic trainers;

"(C) Audiologists;

"(D) Certified orthotists;

"(E) Chiropractors;

"(F) Community mental health centers or clinics;

"(G) Dentists;

"(H) Home health care providers;

"(I) Hospice care providers;

"(J) Hospital-based services;

"(K) Hospitals;

"(L) Licensed ambulatory surgery centers;

"(M) Licensed certified social workers;

"(N) Licensed dieticians;

"(O) Licensed durable medical equipment providers;

"(P) Licensed professional counselors;

"(Q) Licensed psychological examiners;

"(R) Long-term care facilities;

"(S) Occupational therapists;

"(T) Optometrists

"(U) Pharmacists;

"(V) Physical therapists;

"(W) Physicians and surgeons (M.D. and D.O.);

"(X) Podiatrists;
"(Y) Prosthetists;
"(Z) Psychologists;
"(AA) Respiratory therapists;
"(BB) Rural health clinics;
"(CC) Speech pathologists; and
"(DD) Other health care practitioners as determined by the department in rules promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and"

Cross References. Patient Protection Act of 1995, § 23-99-201 et seq.

23-99-801. Application and intent.

(a) The state's any willing provider laws shall not be construed:

(1) To require all physicians or a percentage of physicians in the state or a locale to participate in the provision of services for a health maintenance organization; or

(2) To take away the authority of health maintenance organizations that provide coverage of physician services to set the terms and conditions for participation by physicians, though health maintenance organizations shall apply the terms and conditions in a nondiscriminatory manner.

(b)(1) The state's any willing provider laws shall apply to:

(A) All health insurers, regardless of whether they are providing insurance, including prepaid coverage, or administering or contracting to provide provider networks; and

(B) All multiple-employer welfare arrangements and multiple-employer trusts.

(2) This subsection shall apply only to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.

(c)(1) The state's any willing provider laws shall be construed to include within their provider definitions all those providers of the same class or classes who are:

(A) Practicing or operating within a border city in an adjoining state; and

(B) Licensed or authorized to practice or operate by the adjoining state, regardless of whether the provider is licensed or otherwise authorized to operate in Arkansas.

(2) As used in this section, "border city" means a city in a state adjoining Arkansas which adjoins the Arkansas state line and is not separated from an Arkansas city only by a navigable river.

(d)(1) As clarification, nothing in the state's any willing provider laws shall be construed to cover or regulate healthcare provider networks offered by noninsurers.

(2) If an employer sponsoring a self-insured health benefit plan contracts directly with providers or contracts for a healthcare provider network through a noninsurer, then the any willing provider law does not apply.

(3) If a health insurer subcontracts with a noninsurer whose healthcare network does not meet the requirements of the any willing

provider law, then the noninsurer may create a separate healthcare provider network that meets the requirements of the any willing provider law.

(4) If the noninsurer chooses not to create the separate healthcare provider network, then the responsibility for compliance with the any willing provider law is the obligation of the health insurer to the extent permitted by the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.

(e) Notwithstanding the provisions of subsection (d) of this section, the Patient Protection Act of 1995, § 23-99-201 et seq., and this subchapter apply to a health benefit plan provided by the State of Arkansas to state employees and public school personnel under § 21-5-401 et seq., whether self-funded or insured.

History. Acts 2005, No. 491, § 4; 2009, No. 702, § 1.

Amendments. The 2009 amendment added (e).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Public Health and Welfare, 28 U. Ark. Little Rock L. Rev. 389.

23-99-802. Definitions.

As used in this subchapter:

(1) "Any willing provider law" means a law that prohibits discrimination against a provider willing to meet the terms and conditions for participation established by a health insurer or that otherwise precludes an insurer from prohibiting or limiting participation by a provider who is willing to accept a health insurer's terms and conditions for participation in the provision of services through a health benefit plan;

(2) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.;

(3) "Health benefit plan" means any health insurance policy or certificate, health maintenance organization contract, hospital and medical service corporation contract or certificate, a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., or any health benefit plan that affects the rights of an Arkansas insured and bears a reasonable relation to Arkansas, whether delivered or issued for delivery in Arkansas;

(4) "Healthcare provider" or "provider" means those individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

(A) Advanced practice nurses;

(B) Athletic trainers;

(C) Audiologists;

(D) Certified orthotists;

(E) Chiropractors;
(F) Community mental health centers or clinics;
(G) Dentists;
(H) Home health care;
(I) Hospice care;
(J) Hospital-based services;
(K) Hospitals;
(L) Licensed ambulatory surgery centers;
(M) Licensed certified social workers;
(N) Licensed dieticians;
(O) Licensed durable medical equipment providers;
(P) Licensed professional counselors;
(Q) Licensed psychological examiners;
(R) Long-term care facilities;
(S) Occupational therapists;
(T) Optometrists;
(U) Pharmacists;
(V) Physical therapists;
(W) Physicians and surgeons (M.D. and D.O.);
(X) Podiatrists;
(Y) Prosthetists;
(Z) Psychologists;
(AA) Respiratory therapists;
(BB) Rural health clinics;
(CC) Speech pathologists; and
(DD) Other healthcare practitioners as determined by the department in regulations promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(5) "Health insurer" or "healthcare insurer" means any entity that is authorized by the State of Arkansas to offer or provide health benefit plans, policies, subscriber contracts, or any other contracts of a similar nature which indemnify or compensate healthcare providers for the provision of healthcare services;

(6) "Noninsurer" means an entity that is not required to obtain authorization from the department to do business as a health insurer but that does have a provider network; and

(7) "Self-insured" includes self-funded and vice versa.

History. Acts 2005, No. 491, § 5; 2005, No. 2238, § 3.

23-99-803. Agency enforcement.

The Insurance Commissioner shall:

(1) Enforce the state's any willing provider laws using powers granted to the commissioner in the Arkansas Insurance Code; and

(2) Be entitled to seek an injunction against a health insurer in a court of competent jurisdiction.

History. Acts 2005, No. 491, § 3.

Publisher's Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

CHAPTER 100

STATE INSURANCE DEPARTMENT CRIMINAL INVESTIGATION DIVISION TRUST FUND ACT

SECTION.
23-100-101. Title.
23-100-102. Insurers' payment extensions — Penalties for noncompliance — Insurance Commissioner's waiver for impaired or insolvent insurers.
23-100-103. State Insurance Department Criminal Investigation Division Trust Fund — Creation.
23-100-104. Antifraud assessment.
23-100-105. Insurers' antifraud fees — Deposit into State Insurance Department Criminal Investigation Division Trust Fund.
23-100-106. Rules and regulations.
23-100-107. State Insurance Department Criminal Investigation Division Trust Fund — Department vouchers and Auditor of State warrants.

Cross References. State Insurance Department Trust Fund, § 19-5-922.

State Insurance Department Trust Fund Act, § 23-61-701 et seq.

Fraudulent Insurance Acts Prevention, § 23-66-501 et seq.

Effective Dates. Acts 1997, No. 337, § 11: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the Arkansas Insurance Code is in immediate need of revision to protect the insurance-buying consumers of this State; that the provisions of this act are essential to the operations and activities of the Insurance Fraud Investigation Division of the Arkansas Insurance Department which are intended to provide protection to the insurance-buying consumers of this State and delay in the effective date of this act would work irreparable harm upon the proper administration and provision of essential government programs. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral preneed laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect

from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-100-101. Title.

This chapter shall be known as the "State Insurance Department Criminal Investigation Division Trust Fund Act".

History. Acts 1997, No. 337, § 1; 2005, No. 1697, § 25.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-102. Insurers' payment extensions — Penalties for noncompliance — Insurance Commissioner's waiver for impaired or insolvent insurers.

(a)(1) The Insurance Commissioner may grant any licensed insurer an extension for payment of the antifraud assessment for good cause shown, upon written application of the licensed insurer received at the State Insurance Department on or before each annual due date.

(2) Absent the commissioner's approval of such an extension for good cause, licensed insurers failing timely to pay the antifraud assessment shall be subject to a penalty of one hundred dollars ($100) per day for each day of delinquency, payable to the State Insurance Department Criminal Investigation Division Trust Fund.

(3)(A) The commissioner may pursue any appropriate legal remedies to collect the antifraud assessments and penalties due and unpaid from any insurer.

(B) Further, the commissioner in his or her discretion may order suspension of the delinquent insurer's Arkansas certificate of authority after notice and hearing until the payment of all such antifraud assessments and penalties is remitted to the fund.

(C) Absent grant of the commissioner's waiver for good cause shown, the commissioner may revoke the Arkansas certificate of authority of any delinquent insurer consistently refusing and failing without good cause to remit payment of these antifraud assessments and penalties to the fund pursuant to this section.

(b)(1) The commissioner in his or her discretion may waive all or any part of the antifraud assessment due annually from a licensed insurer upon the:

(A) Suspension or revocation of the insurer's Arkansas certificate of authority;

(B) Issuance of a court order placing the company into conservation, rehabilitation, or liquidation in any state; or

(C) Commissioner's finding that the insurer is impaired or insolvent.

(2) Upon the reinstatement or activation of the insurer's certificate of authority in good standing, the commissioner's waiver automatically terminates, and the insurer shall be liable for payment of the assessment on the next succeeding March 1 without retroactive reimbursement for the amount of the antifraud assessments which would normally have accrued during the waiver period.

History. Acts 1997, No. 337, § 4; 1999, No. 881, § 19; 2005, No. 1697, § 26.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-103. State Insurance Department Criminal Investigation Division Trust Fund — Creation.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "State Insurance Department Criminal Investigation Division Trust Fund" to be used to defray the expenses of the Criminal Investigation Division in the discharge of its administrative and regulatory powers and duties as prescribed by law.

(b) No money is to be appropriated from this fund for any purpose except for the personal services and operating expenses, maintenance and operations, and support of and improvements to the division, and at the direction of the Insurance Commissioner, for the use, benefit, and support of the division.

(c) The fund established pursuant to this section shall be administered, disbursed, and invested under the direction of the commissioner and the Treasurer of State.

(d) All income derived through:

(1) Investment of the fund, including, but not limited to, interest and dividends, shall be credited as investment income to the fund; and

(2) Grants, refunds, gifts, or any other sources to the fund shall be credited as income to the fund and deposited therein.

(e) Further, all moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment, except as may be provided by law.

History. Acts 1997, No. 337, § 2; 2005, No. 1697, § 27.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-104. Antifraud assessment.

(a)(1)(A) Each licensed insurer shall pay into the State Insurance Department Criminal Investigation Division Trust Fund a nonrefundable antifraud assessment as directed by the Insurance Commissioner for the reasonable and necessary expenses and operation of the Criminal Investigation Division of the State Insurance Department.

(B) As used in this section, "licensed insurer" includes a:

(i) Licensed stock and mutual insurance company;

(ii) Reinsurer;

(iii) Health maintenance organization;

(iv) Fraternal benefit society;

(v) Hospital and medical service corporation;

(vi) Stipulated premium insurer;

(vii) Farmers' mutual aid association; and

(viii) Prepaid legal insurer.

(2) This section does not apply to an approved but nonadmitted surplus lines insurer or to a registered risk retention group.

(b)(1) The antifraud assessment required by this section shall be paid annually on or before June 30 at the time and in the manner that the commissioner prescribes or at times alternate from June 30 annually that the commissioner prescribes.

(2)(A) By rule the commissioner may set the amount of the antifraud assessment.

(B) The antifraud assessment shall not exceed one thousand dollars ($1,000) per fiscal year.

(3) The antifraud assessment shall be in addition to the premium taxes and fees now required under existing law.

(c) This section shall apply notwithstanding the provisions of § 26-57-601 et seq., the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and other provisions of Arkansas law.

History. Acts 1997, No. 337, § 3; 1999,

No. 881, § 20; 2005, No. 1697, § 28; 2007, No. 827, § 190.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-105. Insurers' antifraud fees — Deposit into State Insurance Department Criminal Investigation Division Trust Fund.

The Insurance Commissioner shall deposit all antifraud assessments and any penalties assessed under this chapter, as well as any other income received for purposes set out in § 23-100-103(a), into the State Insurance Department Criminal Investigation Division Trust Fund as special revenues.

History. Acts 1997, No. 337, § 5; 1999, No. 881, § 21; 2005, No. 1697, § 29.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

23-100-106. Rules and regulations.

The Insurance Commissioner may promulgate reasonable rules and regulations deemed necessary for the administration of this chapter.

History. Acts 1997, No. 337, § 6.

23-100-107. State Insurance Department Criminal Investigation Division Trust Fund — Department vouchers and Auditor of State warrants.

(a) All antifraud assessments, penalties, and revenues provided in this chapter received as special revenues for the State Insurance Department Criminal Investigation Division Trust Fund and deposited therein shall be deemed for all purposes special revenues of the fund and of the State Insurance Department for the sole support, operation, and maintenance of the Criminal Investigation Division and when paid into the State Treasury by the Insurance Commissioner, shall be

maintained by the State Treasury as the State Insurance Department Criminal Investigation Division Trust Fund, separate from all other funds, and available only for the payment of the expenses of the division pursuant to the appropriations therefor.

(b) Upon proper voucher from the commissioner, the Auditor of State shall issue his or her warrant on the Treasurer of State in payment of all salaries and other expenses incurred in the administration of this chapter.

History. Acts 1997, No. 337, § 7; 1999, No. 881, § 22; 2005, No. 1697, § 30.

A.C.R.C. Notes. Acts 2005, No. 1697, § 1, provided: "Purpose. The General Assembly recognizes that a competitive market for insurance products is vital to Arkansans and that active competition in the insurance marketplace produces the fairest and lowest rates over any given period of time. Furthermore, open and transparent regulation of the insurance industry as well as widespread dissemination of information concerning regulatory actions regarding insurance rates and information helpful to consumers in purchasing and utilizing insurance coverage will assist Arkansans in purchasing, maintaining, and utilizing wisely their insurance coverages. Therefore, the purpose of this act is to assist consumers by providing them the information and tools necessary to be an informed and educated consumer of insurance coverage."

CHAPTER 101

CREDITOR-PLACED INSURANCE

SECTION.
23-101-101. Purpose.
23-101-102. Scope.
23-101-103. Definitions.
23-101-104. Prohibited coverages.
23-101-105. Term of insurance policy.
23-101-106. Calculation and payment of premiums.
23-101-107. Evidence of coverage.
23-101-108. Filing, approval, and withdrawal of forms and rates.
23-101-109. Refund of unearned premiums.
23-101-110. Claims.
23-101-111. Rights and obligations of the parties.
23-101-112. Remittance of premiums and payment of compensation.
23-101-113. Disclosures to debtor.
23-101-114. Rules and regulations.

Effective Dates. Acts 2001, No. 580, § 29, provided: "The effective date of the provisions of this act is July 1, 2002. However, the commissioner may extend the effective date to a subsequent date, but no later than October 31, 2002, if he finds that implementation of the act is not possible by July 1, 2002."

Acts 2001, No. 580, § 30: Mar. 6, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that the present laws on licensure of Arkansas surplus line brokers do not meet compliance with the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338, and that other insurance laws are inadequate to protect the public; that in pertinent part, the changes to the insurance code are needed to assure compliance with the provisions of that new federal law which do not allow discrimination in licensure of resident and nonresident applicants for insurance by state insurance regulators; that Arkansas must achieve compliance with this new Federal law which was enacted in 1999 and which has a November 12, 2002 compliance deadline in regard to the Arkansas Insurance Department's regulation of agents, brokers,

surplus line brokers, and other applicants for individual and corporate licenses; and that implementation after the effective date of this act will require significant time on the part of the industry and the Arkansas Insurance Department to come into compliance by the November 12, 2002, deadline. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-101-101. Purpose.

The purposes of this chapter are to:

(1) Promote the public welfare by regulating creditor-placed insurance;

(2) Create a legal framework within which creditor-placed insurance may be written in this state; and

(3) Minimize unfair competitive practices in the sale of creditor-placed insurance.

History. Acts 1997, No. 930, § 1; 2001, No. 580, § 25.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-101-102. Scope.

(a) This chapter applies to an insurer or producer transacting creditor-placed insurance as defined in this chapter.

(b) All creditor-placed insurance written in connection with credit transactions for personal, family, or household purposes is subject to the provisions of this chapter, except:

(1) Transactions involving extensions of credit primarily for business or commercial purposes;

(2) Insurance on collateralized real property;

(3) Insurance offered by the creditor and elected by the debtor at the debtor's option;

(4) Insurance for which no specific charge is made to the debtor or the debtor's account; or

(5) Blanket insurance, whether paid for by the debtor or the creditor.

(c) The Insurance Commissioner shall have authority to bring an administrative or judicial proceeding to enforce this chapter. No provisions of this chapter are intended to establish or extinguish a private right of action for a violation of any provision of this chapter.

History. Acts 1997, No. 930, § 2.

23-101-103. Definitions.

As used in this chapter:

(1) "Actual cash value" means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence;

(2) "Blanket insurance" means insurance that provides coverage on collateral as defined in a policy issued to a creditor, without specifically listing the collateral covered;

(3) "Collateral" means personal property that is pledged as security for the satisfaction of a debt;

(4) "Commissioner" means the Insurance Commissioner, his or her deputies, and employees;

(5) "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement;

(6) "Credit transaction" means a transaction by the terms of which the repayment of money loaned or credit commitment made, or payment of goods, services, or properties sold or leased, is to be made at a future date or dates;

(7) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of a lender, vendor, or lessor;

(8)(A) "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense, or damage to collateralized personal property as a result of fire, theft, collision, or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by limited dual interest insurance.

(B) Creditor-placed insurance is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required physical damage insurance with the cost of the coverage being charged to the debtor.

(C) Creditor-placed insurance shall be either single interest insurance or limited dual interest insurance;

(9) "Debtor" means the borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction;

(10) "Insurance tracking" means monitoring evidence of insurance on collateralized credit transactions to determine whether insurance required by the credit agreement has lapsed and communicating with debtors concerning the status of insurance coverage;

(11) "Insurer" means an insurance company, association, or exchange authorized or approved to issue insurance policies regulated by this chapter in the State of Arkansas;

(12) "Lapse" means that the insurance coverage required by the credit agreement is not in force;

(13)(A) "Limited dual interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing the debtor's credit transaction.

(B) Limited dual interest insurance waives the three (3) conditions for loss payment under single interest insurance and extends coverage on the collateral, to the extent provided in § 23-101-110(a), in the possession of the debtor;

(14) "Loss ratio" means the ratio of incurred losses to earned premium;

(15) "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned charges;

(16) "Producer" means an insurance producer as defined in § 23-64-502; and

(17) "Single interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing a debtor's credit transaction. Three (3) conditions must be met for payment of loss under the policy:

(A) The debtor has defaulted in payment;

(B) The creditor has legally repossessed the collateral, unless collateral has been stolen from the debtor; and

(C) The creditor has suffered an impairment of interest.

History. Acts 1997, No. 930, § 1; 2001, No. 580, § 26.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-101-104. Prohibited coverages.

(a) Creditor-placed insurance coverage shall not include:

(1) Coverage for the cost of repossession;

(2) Skip, confiscation, and conversion coverage;

(3) Coverage for payment of mechanics' or other liens that do not arise from a covered loss occurrence;

(4) Coverage that requires a debtor's insurance deductible to be less than two hundred fifty dollars ($250); or

(5) Coverage that is broader than the insurance coverages that meet the minimum insurance requirements of the credit agreement.

(b) Nothing in this section shall be deemed to prohibit the issuance of a separate policy or endorsement providing the coverages listed in subsection (a) of this section. However, no charge shall be passed along to the debtor for the coverages.

History. Acts 1997, No. 930, § 6.

23-101-105. Term of insurance policy.

(a) Creditor-placed insurance shall become effective on the latest of the following dates:

(1) The date of the credit transaction;

(2) The date prior coverage, including prior creditor-placed insurance coverage, lapsed;

(3) One (1) year before the date on which the related insurance charge is made to the debtor's account; or

(4) A later date provided for in the agreement between the creditor and insurer.

(b) Creditor-placed insurance shall terminate on the earliest of the following dates:

(1) The date other acceptable insurance becomes effective, subject to the debtor's providing acceptable evidence of the other insurance to the creditor;

(2) The date the collateralized personal property is repossessed, unless the property is returned to the debtor within ten (10) days of the repossession;

(3) The date the collateralized personal property is determined by the insurer to be a total loss;

(4) The date the debt is completely extinguished; or

(5) An earlier date specified in the individual policy or certificate of insurance.

(c) An insurance charge shall not be made to a debtor for a term longer than the scheduled term of the creditor-placed insurance when it becomes effective, nor may an insurance charge be made to the debtor for creditor-placed insurance before the effective date of the insurance.

(d) If a charge is made to a debtor for creditor-placed insurance coverage that exceeds a term of one (1) year, the debtor shall be notified at least annually that the insurance will be canceled and a refund or credit of unearned charges made if evidence of acceptable insurance secured by the debtor is provided.

History. Acts 1997, No. 930, § 4.

23-101-106. Calculation and payment of premiums.

(a) Premiums for creditor-placed insurance coverage may be calculated based on:

(1) An amount not exceeding the net debt even though the coverage may limit the insurer's liability to the net debt, actual cash value, or cost of repair; or

(2) Other premium calculation methods that more closely reflect the exposure of each item insured and approximate the premium calculation method of the coverage required by the credit agreement.

(b)(1) An insurer shall not write creditor-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the Insurance Commissioner.

(2) The premium or amount charged to the debtor for creditor-placed insurance shall not exceed the premiums charged by the insurer, computed at the time the charge to the debtor is determined.

(c) A method of billing insurance charges to the debtor on closed-end credit transactions that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date is prohibited unless specifically disclosed at the time of the origination of the credit agreement and specifically agreed to by the debtor.

History. Acts 1997, No. 930, § 5.

23-101-107. Evidence of coverage.

(a) Creditor-placed insurance shall be set forth in an individual policy or certificate of insurance.

(b) A copy of the individual policy, certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

History. Acts 1997, No. 930, § 7.

23-101-108. Filing, approval, and withdrawal of forms and rates.

(a) All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Insurance Commissioner.

(b) The commissioner shall within thirty (30) days after the filing of the policy forms and certificates of insurance disapprove a form that does not conform to this chapter or to other applicable provisions of the insurance statutes and regulations and shall within thirty (30) days of filing disapprove a schedule of premium rates pertaining to the form if it does not conform to the standard set forth in subsection (e) of this section.

(c)(1) If the commissioner disapproves a form or schedule of premium rates in accordance with subsection (b) of this section, the commissioner shall promptly notify the insurer in writing of the disapproval, and it shall be unlawful for the insurer to issue or use the form or schedule.

(2)(A) An insurer aggrieved by any order or decision of the commissioner made without a hearing, within thirty (30) days after notice to the insurer or organization, may make written request to the commissioner for a hearing thereon.

(B) The commissioner shall hear the party or parties within twenty (20) days after receipt of the request and shall give not less than ten (10) days' written notice of the time and place of the hearing.

(C) The hearing shall be concluded within fifteen (15) days from its commencement, except that the commissioner, for good cause shown and with notice to the interested parties, may grant additional time, not to exceed thirty (30) days. Within fifteen (15) days after the hearing, the commissioner shall affirm, reverse, or modify his or her previous action, specifying his or her reasons therefor.

(D) Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his or her previous action.

(d) Unless the commissioner disapproves the form or schedule of premium rates in accordance with subsections (b) and (c) of this section or gives written approval of the form or schedule within thirty (30) days after the filing, the form or schedule shall be deemed approved on the thirty-first day after the filing.

(e)(1) The schedules of premium rates shall not be excessive, inadequate, or unfairly discriminatory.

(2) In determining whether a schedule of premium rates is excessive, inadequate, or unfairly discriminatory, the commissioner shall take into account past and prospective loss experience, general and administrative expenses, loss settlement and adjustment expenses, and other acquisition costs including insurance tracking costs, reserves, taxes, licenses, fees and assessments, reasonable insurer profit, and other relevant data.

(3) Rates are not unfairly discriminatory because different premiums result for different policyholders, including group policyholders, with similar loss exposures but different expense factors or similar expense factors but different loss exposures, nor are rates unfairly discriminatory if they are averaged broadly among all persons insured in this state or all persons insured under a group insurance policy.

(f)(1) The commissioner may withdraw approval of an approved form or schedule of premium rates when the commissioner would be required to disapprove the form or schedule of premium rates if it were filed at the time of the withdrawal. The withdrawal shall be in writing and shall specify the reasons for withdrawal and the effective date of the withdrawal.

(2) Within thirty (30) days after receiving the written notification of the withdrawal, an insurer adversely affected by a withdrawal may request a hearing in the manner provided in subsection (c) of this section to determine whether the withdrawal should be annulled, modified, or confirmed.

(3) Unless the commissioner grants an extension in writing in the withdrawal or subsequently grants an extension, the withdrawal shall become effective, in the absence of a request for hearing, prospectively and not retroactively, on the ninety-first day following delivery of the notice of withdrawal and, if the request for hearing is filed, on the ninety-first day following delivery of written notice of the commissioner's determination.

(g) Forms and rates filed and approved in accordance with this section shall be deemed to be in compliance in all respects with the laws of this state.

History. Acts 1997, No. 930, § 8.

23-101-109. Refund of unearned premiums.

(a) Within sixty (60) calendar days after the termination of creditor-placed insurance coverage and in accordance with the formulas approved by the Insurance Commissioner, an insurer shall refund any unearned premium or other identifiable charges.

(b)(1) Within sixty (60) calendar days after the termination date of creditor-placed insurance coverage, the insurer shall provide to the debtor a statement of refund disclosing the effective date, the termination date, the amount of premium being refunded, and the amount of premium charged for the coverage provided.

(2) No statement shall be required in the event that the policy terminates pursuant to § 23-101-105(b)(4).

(c) The entire amount of premiums, minimum premiums, and fees or charges of any kind shall be refunded if no coverage was provided.

History. Acts 1997, No. 930, § 9.

23-101-110. Claims.

(a) In the event of a loss under the creditor-placed insurance policy, the insurer shall pay, at a minimum, the least of the following, the value of which shall be determined as of the date of loss:

(1) The cost to repair the collateral less any applicable deductible;

(2) The actual cash value of the collateral, less any applicable deductible;

(3) The net debt, less any applicable deductible. The method of calculation of net debt payable pursuant to this subdivision (a)(3) shall be identical to the method of calculation of net debt for payment of premiums pursuant to § 23-101-106(a); or

(4) If single interest insurance is provided, the amount by which the creditor's interest is impaired.

(b) The net debt or actual cash value amounts in subsection (a) of this section may be reduced by the value of salvage if the insurer does not take possession of the insured property.

(c) In the event of a loss, no subrogation shall run against the debtor from the insurer.

(d) Whenever a claim is made on a creditor-placed insurance policy, the insurer shall furnish to the claimant a written statement of the loss explaining the settlement amount and the method of settlement.

(e)(1) A creditor or insurer may not abandon salvage to a towing or storage facility in lieu of payment of storage fees without the consent of the facility and the claimant.

(2)(A) After the filing of a claim as provided in the policy or certificate of insurance, the insurer shall be responsible for the payment of towing and storage charges for a covered loss occurrence from the time storage is reported to the insurer or lender to the time the claim is paid.

(B) The insurer shall give written notice to the claimant when the claim is paid that the claimant may incur storage charges after the date the claim is paid.

History. Acts 1997, No. 930, § 10.

23-101-111. Rights and obligations of the parties.

(a) In order for the creditor to place insurance on the collateral pledged by the debtor and pass the cost of the insurance on to the debtor:

(1) The creditor must have a security interest in the personal property;

(2) The credit agreement must require the debtor to maintain insurance on the collateral to protect the creditor's interest;

(3) The credit agreement must authorize the creditor to place the insurance if the debtor fails to provide evidence of the insurance; and

(4) These requirements must be clearly disclosed to the debtor at the inception of the credit transaction.

(b)(1) The debtor shall always have the right to provide required insurance through existing policies of insurance owned or controlled by the debtor or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within this state.

(2) However, a creditor may establish maximum acceptable deductibles, insurer solidity standards, and other reasonable conditions with respect to the required insurance.

History. Acts 1997, No. 930, § 11.

23-101-112. Remittance of premiums and payment of compensation.

(a)(1) The entire amount of the premium due from a creditor shall be remitted to the insurer or its producer in accordance with the insurer's requirements.

(2) No commissions may be paid to, or retained by, a person or entity not licensed and appointed in accordance with the Producer Licensing Model Act, § 23-64-501 et seq., nor to a depository institution or an affiliate of a depository institution unless appropriately licensed under § 23-64-101 et seq.

(3) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

(b) The retention by the creditor of unearned premiums upon cancellation of the insurance without crediting to the debtor's account the amount of unearned insurance charges is prohibited.

(c) Unless allowed by § 23-64-513, rebates to the creditor of a portion of the premium charged to the debtor are prohibited as are other inducements provided to the creditor by an insurer or producer. The listing of the following activities as prohibited rebates or inducements

is not intended to be restrictive, and the Insurance Commissioner may identify an activity as prohibited by rule, regulation, or order:

(1) Allowing insurers or producers to purchase certificates of deposit from the creditor or to maintain accounts with the creditor at less than the market interest rates and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration;

(2) Paying a commission to a person, including a creditor, who is not appropriately licensed as a producer in this state; and

(3) Purchasing or offering to purchase certificates of deposit from, or maintaining or offering to maintain deposit accounts or investment accounts with, a creditor as part of a creditor-placed insurance solicitation.

(d) Prohibited rebates or inducements do not include the providing of insurance tracking and other services incidental to the creditor-placed insurance program.

(e) Nothing contained in this section shall prohibit or restrict an insurer or producer from maintaining a demand, premium deposit, or other account or accounts with a creditor for which the insurer or producer provides insurance if the accounts pay the market interest rate and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration.

History. Acts 1997, No. 930, § 12; 2001, No. 580, § 27; 2001, No. 1728, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-101-113. Disclosures to debtor.

(a) A creditor shall not impose charges, including premium costs and related interest and finance charges, on a debtor for creditor-placed insurance coverage unless adequate disclosure of the requirement to maintain insurance has been made to the debtor. Adequate disclosure is accomplished if the following occurs:

(1) The credit agreement sets forth the requirement that the debtor must maintain insurance on the collateral as provided for in § 23-101-111;

(2) The creditor makes reasonable efforts to notify the debtor of the requirement to maintain insurance and allows a reasonable time for compliance with this requirement;

(3) A final notice as required by this chapter is sent to the debtor; and

(4) If creditor-placed insurance coverage is issued, a copy of the policy or certificate is sent to the debtor as provided for in § 23-101-107.

(b)(1) After adequate disclosure of the request to maintain insurance has been made to the debtor as required by this section, a creditor may proceed to impose charges for creditor-placed insurance if the debtor fails to provide evidence of insurance.

(2) A creditor may impose charges no earlier than ten (10) calendar days after sending the final notice.

(c) Reasonable efforts to notify the debtor are accomplished if:

(1) The creditor mails a notice by first class mail to the debtor's last known address as contained in the creditor's records, stating that the creditor intends to charge the debtor for creditor-placed insurance coverage on the collateral if the debtor fails to provide evidence of the property insurance to the creditor;

(2) The creditor allows the debtor at least twenty (20) calendar days to respond to the notice and provide evidence of acceptable insurance coverage before sending a final notice; and

(3)(A) The creditor sends a final notice in compliance with this section by first class mail to the debtor's last known address as contained in the creditor's records at least ten (10) calendar days before the cost of insurance is charged to the debtor by the creditor.

(B) Proof of the mailing of the final notice shall be retained for at least three (3) years following the expiration or termination of the coverage or as otherwise required by law.

(d) The initial notice shall be in a form determined by the creditor to remind the debtor of the requirement to maintain insurance on the collateral. The final notice shall be as complete as the following notice, printed in not less than 12-point type, and modified when necessary to fit the nature of the credit transaction:

"FINAL NOTICE

Your credit agreement with us requires you to have property insurance on the collateral until you pay off your loan. You have not given us proof you have insurance on the property. You can ask your insurance company or agent to give us proof of insurance or you can send us proof you have property insurance within ten (10) calendar days after the date this letter was postmarked. If you do not, we may buy the insurance and charge the cost to you.

You must pay for the property insurance we buy. It will probably cost more than insurance you can buy on your own. The cost of the insurance we buy may be added to your loan balance and we may charge you interest on it. If we do, you will pay interest at the same rate you pay on your loan or the highest rate permitted by law, whichever is lower. The insurance we buy will pay claims to us (the creditor) for physical damage to your property, at a minimum, the least of the following, determined as of the date of loss: (a) the cost to repair the collateral less any applicable deductible; (b) the actual cash value of the collateral, less any applicable deductible; (c) the net debt, less any applicable deductible. It will not pay any claims made against you [and it may not pay you for any claims you make (delete if limited dual interest coverage)]. The insurance we buy will not give you any liability insurance coverage and will not meet the requirements of a state's financial responsibility law.

The property coverage we buy will start on the date shown in the policy or certificate, which may go back to the date of the loan or the date your

prior coverage stopped. We will cancel the insurance we bought for you and give you a refund or credit of unearned charges if you give us proof you have bought property insurance somewhere else or if you have paid off the loan."

(e)(1) All creditor-placed insurance shall be set forth in an individual policy or certificate of insurance.

(2) Not earlier than the sending of the final notice nor fifteen (15) days after a charge is made to the debtor for creditor-placed insurance coverage, the creditor shall cause a copy of the individual policy, certificate, or other evidence of insurance coverage evidencing the creditor-placed insurance coverage to be sent, first class mail, to the debtor's last known address.

(f) A creditor's compliance with or failure to comply with this chapter shall not be construed to require the creditor to purchase insurance coverage on the collateral, and the creditor shall not be liable to the debtor or a third party as a result of its failure to purchase the insurance.

History. Acts 1997, No. 930, § 13.

23-101-114. Rules and regulations.

After notice and hearing, the Insurance Commissioner may promulgate reasonable rules and regulations to carry out and effectuate the provisions of this chapter.

History. Acts 1997, No. 930, § 14.

CHAPTER 102

ARKANSAS EARTHQUAKE AUTHORITY ACT

SECTION.

23-102-101. Short title.
23-102-102. Legislative findings and intent.
23-102-103. Definitions.
23-102-104. Establishment of Arkansas Earthquake Authority.
23-102-105. Board.
23-102-106. Immunity and limitations on liability.
23-102-107. Plan of operation — Suspension of operation — Dissolution.
23-102-108. Powers.
23-102-109. Market Assistance Program.
23-102-110. Coverages accessible through Arkansas Earthquake Authority.
23-102-111. Administration of Arkansas Earthquake Authority.
23-102-112. Funding.
23-102-113. Policy standards.
23-102-114. Notice and declination.
23-102-115. Appeal.
23-102-116. Rules and regulations.
23-102-117. Federal or multistate catastrophic funds.
23-102-118. Exemption from Arkansas Property and Casualty Insurance Guaranty Act.
23-102-119. Termination of Arkansas Earthquake Authority.

23-102-101. Short title.

This chapter shall be known and may be cited as the "Arkansas Earthquake Authority Act".

History. Acts 1999, No. 1343, § 1.

23-102-102. Legislative findings and intent.

(a) The threat of or the actual occurrence of a major earthquake poses serious consequences for the State of Arkansas and its citizens. Of particular concern is the magnitude of damage to residential homeowner and farmowner dwellings and whether or not these structures are adequately insured.

(b) The market for residential earthquake insurance within the State of Arkansas is currently characterized by the following:

(1) Potential for unavailability of earthquake insurance coverage or inadequate coverage;

(2) Potential lack of capacity and desire of insurers to write residential earthquake coverage due to pressure from rating agencies;

(3) Low percentage of Arkansans with earthquake insurance;

(4) Lack of awareness on the part of residential homeowners and farmowners regarding the consequences of a major earthquake; and

(5) Lack of awareness on the part of residential homeowners and farmowners that earthquake is not a covered peril under a basic homeowner or farmowner policy unless affirmatively added by endorsement.

(c) The General Assembly declares there is a compelling state interest in maintaining a viable and orderly private sector market for residential earthquake insurance in this state. To the extent that private sector insurers are unable to maintain a viable and orderly market for residential earthquake insurance in this state, state actions to maintain such a viable and orderly market are appropriate.

History. Acts 1999, No. 1343, § 2.

23-102-103. Definitions.

As used in this chapter:

(1) "Authority" means the Arkansas Earthquake Authority;

(2) "Board" means the Board of the Arkansas Earthquake Authority;

(3) "Commissioner" means the Insurance Commissioner;

(4) "Event" means an earthquake and all subsequent earthquakes occurring within the following seventy-two-hour period;

(5) "Insurer" means all property insurers as defined in § 23-62-104 and includes farmers' mutual aid associations and all casualty insurers as defined in § 23-62-105;

(6) "Net direct written premium" is the gross amount of premiums received from policies of insurance issued in this state less return premiums and dividends paid or credited to policyholders. "Net direct

written premium" does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers; and

(7) "Program" means the Market Assistance Program.

History. Acts 1999, No. 1343, § 3.

23-102-104. Establishment of Arkansas Earthquake Authority.

(a) There is created a nonprofit legal entity to be known as the "Arkansas Earthquake Authority". The authority shall operate subject to the supervision and control of the Board of the Arkansas Earthquake Authority. The authority is created as a political subdivision, instrumentality, and body politic of the State of Arkansas and, as such, is not a state agency.

(b) The authority shall be exempt from all state, county, and local taxes, including insurance premium taxes, the Arkansas Procurement Law, § 19-11-201 et seq., and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except to the extent defined in this chapter.

History. Acts 1999, No. 1343, § 4.

23-102-105. Board.

(a) The Arkansas Earthquake Authority shall operate subject to the supervision and control of the Board of the Arkansas Earthquake Authority. There shall be a board of seven (7) members to be appointed by the Insurance Commissioner, which shall meet at least annually to review and prescribe operating rules. The commissioner shall apportion the number of positions into three (3) classes which shall consist of the following members:

(1) Three (3) members shall be representatives of foreign insurance companies;

(2) Two (2) members shall be representatives of domestic insurance companies;

(3) One (1) member shall be a licensed insurance agent; and

(4) One (1) member shall be a consumer.

(b) The commissioner shall appoint members by class of one-year terms, two-year terms, and three-year terms. Thereafter, at each annual meeting, members appointed to succeed those whose terms expire shall be appointed to three-year terms.

(c) The board shall elect one (1) of its members as chair.

(d) Any vacancy in the board occurring for any reason other than the expiration of a term shall be filled for the unexpired term in the same manner as the original appointment.

(e) Members of the board may be reimbursed from moneys of the authority for actual and necessary expenses incurred by them to attend board meetings but shall not otherwise be compensated for their services.

History. Acts 1999, No. 1343, § 5.

23-102-106. Immunity and limitations on liability.

There is no liability on the part of and no cause of action of any nature may arise against any participating insurer, the Arkansas Earthquake Authority's agents or employees, the Board of the Arkansas Earthquake Authority, or the Insurance Commissioner or his or her representatives for any act or omission in the performance of their powers and duties under this chapter.

History. Acts 1999, No. 1343, § 6.

23-102-107. Plan of operation — Suspension of operation — Dissolution.

(a)(1) The Board of the Arkansas Earthquake Authority shall adopt a plan of operation pursuant to this chapter and shall submit to the Insurance Commissioner for approval the plan of operation, including the Arkansas Earthquake Authority's bylaws and operating rules and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the authority. The plan of operation shall become effective upon approval in writing by the commissioner.

(2) If the board fails to submit a suitable plan of operation within one hundred eighty (180) days after the appointment of the board or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall adopt and promulgate such rules as are necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner.

(b) The plan of operation shall:

(1) Establish procedures for operation of the authority;

(2) Create a fund under the management of the board to pay administrative costs, claims, and other expenses of the authority;

(3) Develop and implement a Market Assistance Program to assist insureds in procuring residential earthquake coverage in the voluntary market;

(4) Develop and implement a program to publicize the existence of the Market Assistance Program and the authority, the eligibility requirements, and procedures for enrollment, and to maintain public awareness of the Market Assistance Program and the authority;

(5) Establish procedures for the handling, accounting, and auditing of assets, moneys, and claims of the authority and the Executive Director of the Arkansas Earthquake Authority or the Plan Administrator of the Arkansas Earthquake Authority;

(6) Establish procedures for selecting either an executive director or a plan administrator in accordance with § 23-102-111;

(7) Establish procedures for issuance of policies;

(8) Establish procedures under which applicants and participants may have written grievances reviewed by a grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three (3) years;

(9) Establish procedures to conduct necessary analyses at reasonable intervals to appropriately evaluate the Arkansas earthquake insurance market;

(10) Establish procedures and guidelines to prevent a company from transferring and causing to be transferred substantially all of its earthquake exposure to the authority unless the commissioner finds after notice and hearing that it is in the best interests of Arkansas citizens to allow such a practice; and

(11) Provide for other matters as may be necessary and proper for the execution of the board's powers, duties, and obligations under this chapter.

(c) If the board finds after investigation conducted pursuant to subdivision (b)(9) of this section that there is sufficient availability and competition in the marketplace, the board shall request that the commissioner hold a public hearing to determine if it is in the best interest of Arkansas citizens to suspend operation of or dissolve the Market Assistance Program or the authority. If after the hearing the commissioner determines that there is sufficient availability and competition in the voluntary earthquake market and it is in the best interest of Arkansas citizens, the commissioner may:

(1) Suspend operations of the Market Assistance Program or the authority;

(2) Suspend policy issuance by the authority or any other operational component of the Market Assistance Program or the authority; or

(3) Dissolve the Market Assistance Program or the authority.

History. Acts 1999, No. 1343, § 7.

23-102-108. Powers.

(a) The Board of the Arkansas Earthquake Authority shall have the general powers and authority granted under the laws of the State of Arkansas and in addition thereto, the specific authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(2) Assess insurers pursuant to § 23-102-112 regarding funding of the Arkansas Earthquake Authority;

(3) Set an appropriate policyholder surcharge for insurers entering the residential homeowner, farmowner, fire and allied lines, and earthquake markets after an event. This surcharge shall be remitted to the Arkansas Earthquake Authority based on these insurers' not having paid the post-event assessments contained in § 23-102-112. The board shall determine the period of time during which this surcharge shall be applicable;

(4) Sue or be sued, including taking any legal actions necessary or proper;

(5) Take such legal action as necessary, including, but not limited to:

(A) Avoiding the payment of improper claims against the Arkansas Earthquake Authority or the coverage provided by or through the Arkansas Earthquake Authority;

(B) Recovering any amounts erroneously or improperly paid by the Arkansas Earthquake Authority;

(C) Recovering any amounts paid by the Arkansas Earthquake Authority as a result of mistake of fact or law;

(D) Recovering other amounts due the Arkansas Earthquake Authority; or

(E) Coordinating legal action with the Insurance Commissioner to enforce the provisions of this chapter;

(6) Establish and modify from time to time as appropriate the rates, rate schedules, expense allowances, agent fees, deductibles, and any other actuarial function appropriate to the operation of the Arkansas Earthquake Authority;

(7) Issue policies of residential earthquake insurance or reinsurance in accordance with the requirements of this chapter. All policy forms shall be subject to the approval of the commissioner;

(8) Authorize the Executive Director of the Arkansas Earthquake Authority or the Plan Administrator of the Arkansas Earthquake Authority to prepare and distribute instruction and application forms to agents and to the general public;

(9)(A) Borrow money and issue or contract with another state authority, including the Arkansas Development Finance Authority, to be issued on its behalf negotiable evidences of debt, including bonds payable from and secured by a pledge of the Arkansas Earthquake Authority of all or any part of the revenues of the Arkansas Earthquake Authority to finance the activities authorized by this chapter and sell those bonds at public or private sale in the form and on those terms and conditions as approved by the board.

(B) Proceeds of bonds and the revenues pledged to secure or pay bonds shall be cash funds and shall not be deposited into the State Treasury.

(C)(i) Bonds shall be special obligations of the Arkansas Earthquake Authority, secured solely by and payable from the revenues of the Arkansas Earthquake Authority. The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds.

(ii) In the discretion of the board and subject to approval by the commissioner, the Arkansas Development Finance Authority shall be authorized and empowered to issue negotiable evidences of debt on behalf of the Arkansas Earthquake Authority for the purposes of providing financing as set forth in subdivision (a)(9) of this section and for all other purposes consistent with and in furtherance of this chapter.

(D) The term of the bonds may not exceed thirty (30) years. In addition, bonds may be issued for the purpose of refunding any bonds issued under this chapter.

(E) Bonds issued by the Arkansas Earthquake Authority are:

(i) Legal investments for all trust funds, the funds of all insurance companies, banks, trust companies, executors, administrators, trustees, and other fiduciaries; and

(ii) Securities that may legally be deposited with and received by any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law, including deposits to secure public funds.

(F) The state pledges to and agrees with the holders of bonds that the state will not limit, alter, or restrict the rights vested in the Arkansas Earthquake Authority to fulfill each pledge of revenues and any other terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights or remedies of the holders of the bonds.

(G) Bonds issued by the Arkansas Earthquake Authority and the interest thereon shall at all times be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes;

(10) Pledge, assign, and grant a security interest in any of the assessments authorized by this chapter or other assets of the Arkansas Earthquake Authority in order to secure any notes, bonds, or other evidences of indebtedness of the Arkansas Earthquake Authority;

(11) Enter into one (1) or more credit facilities, including, but not limited to, lines of credit, permitting the Arkansas Earthquake Authority to draw amounts as approved by the board, with payment, interest rate, indemnity, compensation, security, default, remedy, and other terms and conditions as approved by the board. All drawings under these credit facilities shall be available to finance the activities authorized by this chapter; and

(12) Purchase reinsurance, hedge, securitize, or otherwise mitigate the risks insured or reinsured by the Arkansas Earthquake Authority by entering into such commitments and undertakings and exercising such powers as may be appropriate to accomplish the financings contemplated in this section and thereby carry out the purposes of this chapter.

(b) In addition to the other powers granted by the Arkansas Insurance Code, the commissioner, after notice and hearing in accordance with the provisions of the Arkansas Insurance Code, may impose a monetary penalty upon any insurer or suspend or revoke the certificate of authority to transact insurance in the State of Arkansas of any insurer who fails to pay an assessment or otherwise file any report or furnish information required to be filed with the board pursuant to the board's direction that the board believes to be necessary in order for the board to perform its duties under this chapter.

History. Acts 1999, No. 1343, § 8.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-102-109. Market Assistance Program.

(a) The Board of the Arkansas Earthquake Authority shall develop and implement a Market Assistance Program to assist insureds in procuring residential earthquake coverage in the voluntary market. This shall be accomplished by providing those seeking residential earthquake coverage with a list of insurers participating in the program.

(b) Insurers may participate in the program only after approval by the board. The board shall establish criteria which must be met by each program applicant for approval, including, but not limited to, the following minimum requirements:

(1) All applicants for earthquake coverage which have underlying homeowner, farmowner, or dwelling fire insurance coverage, or meet other criteria as determined by the board and approved by the Insurance Commissioner, shall be accepted;

(2) Residential earthquake coverage must be offered as monoline coverage;

(3) The insurer-applicant is in sound financial condition; and

(4) The insurer-applicant has retained or contracted with appropriate skilled personnel to service insureds.

(c) By rule and regulation, the commissioner may restructure the program criteria set forth in subsection (b) of this section or any other component of the program if the commissioner finds that the program is not substantially accomplishing its objective of assisting residential insureds in procuring earthquake coverage in the voluntary market and that the restructuring will be in the best interests of Arkansas citizens.

(d) Program insurers shall give ninety (90) days' notice in writing to the board and the commissioner of their withdrawal from the program.

(e) Notwithstanding any provision in § 23-64-514 regarding agent appointments, all licensed property and casualty agents shall be authorized to access and place coverage through a program insurer.

History. Acts 1999, No. 1343, § 9; 2001, No. 580, § 28.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-102-110. Coverages accessible through Arkansas Earthquake Authority.

(a) As long as the Market Assistance Program has at least one (1) approved insurer, no residential earthquake coverage shall be issued by

the Arkansas Earthquake Authority, except as provided in subsection (b) of this section.

(b) If there are no approved insurers in the program or if after notice and hearing, the Board of the Arkansas Earthquake Authority or the Insurance Commissioner finds that the program rates substantially exceed rates that could be offered by the authority, and the board or commissioner finds after a hearing that it is in the best interests of Arkansas citizens to issue coverage directly through the authority, and with the concurrence of the House Committee on Insurance and Commerce and the Senate Committee on Insurance and Commerce, if the General Assembly is in session, or the concurrence of the House Committee on Insurance and Commerce and the Senate Committee on Insurance and Commerce, if the General Assembly is not in session, the board shall proceed to offer coverage through the authority to potential insureds.

History. Acts 1999, No. 1343, § 10.

23-102-111. Administration of Arkansas Earthquake Authority.

(a) The Board of the Arkansas Earthquake Authority may either appoint an Executive Director of the Arkansas Earthquake Authority or may select a Plan Administrator of the Arkansas Earthquake Authority. If an executive director is chosen, he or she shall hire all staff necessary to enable him or her to discharge the duties imposed under this chapter and as may be authorized by law. If a plan administrator is chosen, the board may utilize a competitive bidding process to evaluate applicants and bids submitted under this section, based upon criteria established by the board which shall include, but not be limited to, the following:

(1) An estimate of total charges for administering the plan;

(2) The financial condition and stability of the plan administrator; and

(3) The technical expertise and qualifications of personnel.

(b) The plan administrator shall serve for a period of three (3) years subject to removal for cause and subject to the terms, conditions, and limitations of the contract between the board and the plan administrator. The board may advertise for and accept bids to serve as the plan administrator for the succeeding three-year periods.

(c) The executive director or plan administrator shall perform functions related to the plan as may be assigned to it including:

(1) Determination of eligibility for coverage under the Market Assistance Program or the Arkansas Earthquake Authority;

(2) Payment and processing of claims;

(3) Establishment of a premium billing procedure for collection of premiums. Billings shall be made on a periodic basis as determined by the board;

(4) Other necessary functions to assure timely payment of benefits to covered persons under the plan, including:

(A) Making available information relating to the proper manner of submitting a claim for benefits under the plan and distributing forms upon which submissions shall be made; and

(B) Evaluating the eligibility of each claim for payment under the plan; and

(5) Conduct necessary analyses at reasonable intervals to appropriately evaluate the Arkansas earthquake insurance market and take action necessary to accomplish the purposes of this chapter.

(d) The executive director or plan administrator shall submit regular reports to the board regarding the operation of the plan. Frequency, content, and form of the report shall be determined by the board.

(e) The executive director or plan administrator shall pay claim expenses from the premium payments or other income received from or on behalf of plan participants and allocated by the board for claim expenses. If the total amount available at any time to the authority is insufficient to make all necessary claims payments, the moneys available shall be prorated, and the unpaid portion shall be paid as soon thereafter as moneys become available.

(f) The executive director or plan administrator shall be governed by the requirements of this chapter.

(g) The plan administrator shall be compensated as provided in the contract between the board and the plan administrator.

History. Acts 1999, No. 1343, § 11.

23-102-112. Funding.

(a) Rates.

(1) The Arkansas Earthquake Authority shall establish rates for plan coverage. These rates and rating schedules may be adjusted for appropriate factors such as geographical variation in claim costs, retrofitting, and other mitigation efforts and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices.

(2) The rates charged by the authority shall not compete with voluntary market rates so that the authority functions as a residual market mechanism to provide insurance when insurance cannot be procured in the voluntary market. Rates and schedules shall be submitted to the Insurance Commissioner for approval prior to use.

(b) Initial Assessment. Initial operating capital shall be contributed based on the following:

(1) All authorized insurers reporting one million dollars ($1,000,000) or more in premium on their most recent annual statement shall pay a maximum initial assessment of up to one thousand dollars ($1,000) plus twenty-five thousandths of one percent (.025%) of their net direct written premium in the State of Arkansas as reported in their most recent annual statement. This assessment may be collected in incremental amounts or as one (1) single assessment; and

(2) All authorized insurers reporting less than one million dollars ($1,000,000) in premium on their most recent annual statement shall pay a maximum initial assessment of up to five hundred dollars ($500), plus twenty-five thousandths of one percent (.025%) of their net direct written premium in the State of Arkansas as reported in their most recent annual statement. This assessment may be collected in incremental amounts or as one (1) single assessment.

(c) ADMINISTRATIVE ASSESSMENTS.

(1)(A) Insurers shall contribute additional assessments as may be reasonable and necessary to meet the authority's annual projected administrative expenses.

(B) For the purposes of this section, administrative expenses shall include all reasonable and necessary operating expenses incurred or to be incurred by the authority and may be up to, but not exceeding, an aggregate total of one million dollars ($1,000,000) for all authorized insurers identified in subdivision (c)(2) of this section.

(2)(A) These assessments shall be made as the actual need for additional administrative funds arises to ensure that the authority incurs no deficit spending.

(B) Assessments shall be apportioned by the Board of the Arkansas Earthquake Authority among authorized insurers writing homeowner, farmowner, fire and allied lines, excluding commercial policies and crop hail, in proportion to the ratio that the total net direct written premium collected in the State of Arkansas by the insurer on its homeowner, farmowner, fire and allied lines during the preceding calendar year bears to the total net direct written premium collected by all insurers on their homeowner, farmowner, fire and allied lines in the State of Arkansas for the preceding calendar year.

(C) Each insurer's assessment shall be determined by the board based on annual statements and other reports deemed necessary by the board and filed by the insurer with the board or the commissioner.

(3)(A) An insurer may petition the commissioner for an abatement or deferment of all or part of an assessment imposed by the authority.

(B) The commissioner may abate or defer, in whole or in part, such an assessment if, in the opinion of the commissioner, payment of the assessment would cause the insurer to be deemed in hazardous financial condition, as defined in § 23-68-102.

(C)(i) In the event an assessment against an insurer is abated or deferred in whole or in part, the amount by which such an assessment is abated or deferred shall be assessed against the other insurers in a manner consistent with the basis for assessments set forth in subsection (a) of this section.

(ii) The insurer receiving such an abatement or deferment shall remain liable to the plan for the deficiency for four (4) years.

(4) Insurers determined to be insolvent insurers by a court of competent jurisdiction shall be exempt from assessment from and after the date of that determination and until the commissioner determines that the insurer is no longer an insolvent insurer.

(5)(A)(i) All assessments shall be due and payable upon receipt and shall be delinquent if not paid within thirty (30) days of the receipt of the notice by the insurer.

(ii) Failure to timely pay the assessment will automatically subject the insurer to a ten percent (10%) penalty, which will be due and payable within the next thirty-day period.

(B) The board and the commissioner shall have the authority to enforce the collection of the assessment and penalty in accordance with the provisions of this chapter and the Arkansas Insurance Code.

(C) The board may waive the penalty authorized by this subsection if it determines that compelling circumstances exist which justify such a waiver.

(d) Post-event Assessments.

(1) If loss from an event occurs, the authority, in addition to any assessments in subsections (a) and (b) of this section, shall assess all authorized insurers writing homeowner, farmowner, fire and allied lines, excluding commercial policies and crop hail, as may be necessary to produce the additional funds needed to make payment of all covered claims and expenses of the authority.

(2) Assessments during a calendar year may be made up to but not in excess of five percent (5%) of each insurer's net direct homeowner, farmowner, fire and allied lines, excluding commercial policies and crop hail, written premium in the State of Arkansas for the preceding calendar year.

(3) Insurers shall recover the post-event assessment through a surcharge on homeowner, farmowner, fire and allied lines policyholder, excluding crop hail policyholders, equal to the percentage identified by the board for the insurers' post-event assessment. This surcharge shall be exempt from insurance premium taxes.

(4) Pursuant to § 23-102-108, the board shall establish surcharge policies and guidelines for insurers entering the residential homeowner, farmowner, fire and allied lines and earthquake markets, excluding commercial policies and crop hail, after an event to ensure a fair and competitive market.

(5) If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims, the moneys available shall be prorated with the unpaid portion being paid as soon thereafter as moneys become available, with assessments being made in the next and successive calendar years. However, in no event shall the total assessment exceed two hundred fifty million dollars ($250,000,000) in the aggregate, regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority.

(6) The authority may exempt or defer, in whole or in part, the assessment of any insurer if the assessment would cause the insurer to be deemed in hazardous financial condition, as defined in § 23-68-102.

(7) Insurers determined to be insolvent insurers by a court of competent jurisdiction shall be exempt from assessment from and after

the date of that determination and until the commissioner determines that the insurer is no longer an insolvent insurer.

(8) It shall be the duty of each insurer to pay the amount of its assessment to the authority within thirty (30) days after it gives notice of the assessment.

(e) Failure to Pay Assessments.

(1) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

(2) As an alternative, the commissioner may levy a fine on any insurer which fails to pay an assessment when due. The fine shall not exceed one thousand dollars ($1,000) per day and shall be payable to the authority for use in its operations.

(3) In addition, assessments may be collected by the authority through suits brought for that purpose. Venue for suits shall lie in Pulaski County, Arkansas, and the authority shall not be required to give an appeal bond in any cause arising hereunder.

(4) Any insurer whose certificate of authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of the cancellation or surrender.

History. Acts 1999, No. 1343, § 12.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148, is codified as set out in the note following § 23-90-115.

23-102-113. Policy standards.

(a) The Arkansas Earthquake Authority shall offer a residential earthquake policy with dwelling coverage in amounts up to one hundred thousand dollars ($100,000).

(b) Coverage for personal property and additional living expenses shall be provided as determined by the Board of the Arkansas Earthquake Authority in the plan of operation.

(c) The applicable deductible for this coverage shall be determined by the board in the plan of operation.

History. Acts 1999, No. 1343, § 13.

23-102-114. Notice and declination.

(a) Existing Policyholders.

(1)(A) Insurers writing homeowner, farmowner, fire and allied lines, excluding commercial policies and crop hail, shall notify policyholders who do not maintain residential earthquake insurance or who maintain residential earthquake insurance at amounts less than one hundred percent (100%) of the insured value of the dwelling, of their potential eligibility for residential earthquake insurance through the Market Assistance Program or the Arkansas Earthquake Authority.

(B) The notice shall be on a form adopted by the Board of the Arkansas Earthquake Authority and approved by the Insurance

Commissioner, and insurers shall verify to the board compliance with this provision.

(C) The notice shall be provided at such intervals and frequency to be determined by the board, but notice shall be given at a minimum of three (3) different times over a four-year interval.

(2) This notice from insurers shall not be deemed to provide earthquake coverage to existing policyholders who do not maintain a policy of residential earthquake insurance, nor shall the notice be deemed to increase the amounts of earthquake insurance for those policyholders who maintain coverage at less than one hundred percent (100%) of the insured value of the dwelling.

(b) New Policyholders. Insurers writing homeowner, farmowner, fire and allied lines, excluding commercial policies and crop hail, shall advise new applicants for these types of coverage of the availability of residential earthquake insurance through the program or the authority, if coverage is unavailable from the insurer. If an applicant chooses not to purchase residential earthquake coverage through an insurer, including program participants or the authority, the applicant shall reject this coverage in writing on the application or any addendum thereto. Insurers shall maintain the application containing the rejection as part of their files.

History. Acts 1999, No. 1343, § 14.

23-102-115. Appeal.

Any applicant for a policy, any persons insured under the Market Assistance Program or the Arkansas Earthquake Authority, and any agency or insurer affected by the program or authority may appeal to the Insurance Commissioner any ruling or decision of the Board of the Arkansas Earthquake Authority, and the commissioner may consider the appeal under a de novo standard of review.

History. Acts 1999, No. 1343, § 15.

23-102-116. Rules and regulations.

The Insurance Commissioner is authorized to promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this chapter.

History. Acts 1999, No. 1343, § 16.

23-102-117. Federal or multistate catastrophic funds.

In the event a federal or multistate catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the Market Assistance Program or the Arkansas Earthquake Authority is created, the Board of the Arkansas Earthquake Authority shall promptly take appropriate actions to coordinate with the federal

or multistate program to the extent consistent with this chapter and if such actions are in the best interest of Arkansas citizens. The board shall also make recommendations to the General Assembly for coordination with the federal or multistate program or for termination of the program or the authority, if it is in the best interest of Arkansas citizens, or take such other actions as the board finds appropriate.

History. Acts 1999, No. 1343, § 17.

23-102-118. Exemption from Arkansas Property and Casualty Insurance Guaranty Act.

Notwithstanding any other provision of law to the contrary, neither the Arkansas Earthquake Authority nor its policyholders shall be subject to the provisions of or be eligible for the benefits provided by the Arkansas Property and Casualty Insurance Guaranty Act, § 23-90-101 et seq.

History. Acts 1999, No. 1343, § 18.

23-102-119. Termination of Arkansas Earthquake Authority.

Upon termination of the Arkansas Earthquake Authority by the General Assembly or the Insurance Commissioner, its remaining funds shall be transferred to the State Insurance Department Trust Fund unless otherwise directed by the General Assembly.

History. Acts 1999, No. 1343, § 19.

CHAPTER 103

TITLE INSURANCE

SUBCHAPTER.

1. General Provisions. [Repealed.]
2. Arkansas Title Insurance Agents' Licensing Board. [Repealed.]
3. Licensing Requirements. [Repealed.]
4. Arkansas Title Insurance Act.

Subchapter 1 — General Provisions

SECTION.

23-103-101 — 23-103-103. [Repealed.]

23-103-101 — 23-103-103. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2007, No. 684, § 8. The subchapter was derived from the following sources:

23-103-101. Acts 2001, No. 1742, § 1.

23-103-102. Acts 2001, No. 1742, § 3; 2003, No. 1767, § 1.

23-103-103. Acts 2001, No. 1742, § 4; 2005, No. 1994, § 459.

Subchapter 2 — Arkansas Title Insurance Agents' Licensing Board

SECTION.
23-103-201 — 23-103-204. [Repealed.]

23-103-201 — 23-103-204. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2007, No. 684, § 8. The subchapter was derived from the following sources:

23-103-201. Acts 2001, No. 1742, § 5.
23-103-202. Acts 2001, No. 1742, § 6.
23-103-203. Acts 2001, No. 1742, § 7.
23-103-204. Acts 2001, No. 1742, § 8; 2003, No. 1767, § 2.

Subchapter 3 — Licensing Requirements

SECTION.
23-103-301 — 23-103-316. [Repealed.]

23-103-301 — 23-103-316. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2007, No. 684, § 8. The subchapter was derived from the following sources:

23-103-301. Acts 2001, No. 1742, § 9; 2003, No. 1767, § 3.
23-103-302. Acts 2001, No. 1742, § 2.
23-103-303. Acts 2001, No. 1742, § 10.
23-103-304. Acts 2001, No. 1742, § 11.
23-103-305. Acts 2001, No. 1742, § 12; 2003, No. 1767, § 4.
23-103-306. Acts 2001, No. 1742, § 13.
23-103-307. Acts 2001, No. 1742, § 14; 2003, No. 1767, § 5.
23-103-308. Acts 2001, No. 1742, § 15.
23-103-309. Acts 2001, No. 1742, § 16.
23-103-310. Acts 2001, No. 1742, § 17.
23-103-311. Acts 2001, No. 1742, § 18.
23-103-312. Acts 2001, No. 1742, § 19.
23-103-313. Acts 2001, No. 1742, § 20.
23-103-314. Acts 2001, No. 1742, § 21.
23-103-315. Acts 2003, No. 1767, § 6.
23-103-316. Acts 2003, No. 1767, § 7.

Subchapter 4 — Arkansas Title Insurance Act

SECTION.
23-103-401. Title.
23-103-402. Definitions.
23-103-403. Requirement for license.
23-103-404. Authorized activities of title insurers.
23-103-405. Title insurers — Limitation of authority — Powers.
23-103-406. Title insurance agents — Examination of records.
23-103-407. Agency contracts.
23-103-408. Minimum search requirements.
23-103-409. Title insurance agent — Restrictions.
23-103-410. Title insurance inventory maintenance.
23-103-411. Title insurer — Audit.
23-103-412. Title insurer — Restrictions.
23-103-413. Policyholder rights and disclosure.
23-103-414. Record retention requirements.
23-103-415. Rules promulgated by Insurance Commissioner.
23-103-416. Penalties — Liabilities.
23-103-417. Access to public records.

Effective Dates. Acts 2007, No. 684, § 10: Jan. 1, 2008.

23-103-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Title Insurance Act".

History. Acts 2007, No. 684, § 6.

23-103-402. Definitions.

As used in this subchapter:

(1) "Closing" means the collection and disbursement of funds and title insurance premiums out of escrow in connection with a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title;

(2) "Closing agent" means a person that facilitates a closing;

(3) "Depositor" means the person providing funds or documents for delivery to a depository in connection with a transaction involving real property;

(4) "Depository" means a title insurer, title insurance agency, closing agent, or qualified financial institution receiving a deposit of funds or documents;

(5) "Escrow" means the act or process of providing closing services or services pursuant to an escrow agreement;

(6) "Escrow account" means the demand deposit account maintained by a title insurer or title insurance agency at a qualified financial institution into which the title insurer or title insurance agency deposits and disburses funds collected from any person that is or will be a party to a transaction involving real property;

(7) "Person" means an individual or any partnership, association, cooperative, corporation, firm, trust, limited liability company, or other legal entity;

(8) "Qualified financial institution" means a bank, credit union, or savings and loan association regulated, supervised, or examined by federal or state authorities having regulatory authority over banks and trust companies;

(9) "Risks" means the danger or hazards of a loss by encumbrance, a defective or invalid title, or adverse claim to title covered under a title insurance policy;

(10) "Title insurance agency" means a person that has an agency contract under § 23-103-407 with a title insurer;

(11)(A) "Title insurance agent" means an individual affiliated with a title insurance agency who is authorized on behalf of a title insurer to issue a title insurance report or title insurance policy and is:

(i) A resident of the State of Arkansas licensed under § 23-64-101 et seq.; or

(ii) A nonresident individual licensed under § 23-64-101 et seq. and employed by a resident licensee.

(B) "Title insurance agent" does not include:

(i) An individual employed by a title insurance agency that does not sell or negotiate title insurance but who performs marketing duties under the supervision of a title insurance agent;

(ii) An individual employed by a title insurance agency that is a closing agent and does not solicit, sell, or negotiate title insurance; or

(iii) A closing agent that provides closing services but does not otherwise engage in title insurance business in the State of Arkansas;

(12)(A) "Title insurance business" means:

(i) Issuing or offering to issue as an insurer a title insurance policy or closing protection letter;

(ii) Transacting or proposing to transact any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance report or policy:

(a) Guaranteeing, warranting, or otherwise insuring the status of title, liens, encumbrances, or other matters of record;

(b) Executing title insurance policies;

(c) Effecting contracts of reinsurance;

(d) Underwriting titles; or

(e) Collecting, disbursing, or receiving title insurance premiums, unless incidental to serving as a closing agent; or

(iii) Doing or proposing to do any business substantially equivalent to the matters described in this subdivision (12) in a manner designed to evade this subchapter.

(B) "Title insurance business" does not include:

(i) A closing or escrow; or

(ii) The activities of a closing agent or other party performing a closing or escrow;

(13) "Title insurance policy" means a contract, including any coverage, enhancements to coverage, or endorsements, insuring or indemnifying owners of or other persons lawfully interested in personal or real property against loss or damage arising from any of the following conditions existing on, before, or subsequent to the policy date and not specifically excepted or excluded:

(A) Defects in or liens or encumbrances on the insured title;

(B) Unmarketability of the insured title;

(C) Invalidity or unenforceability of liens or encumbrances on the insured title of the personal or real property;

(D) Title being vested other than as stated in the policy;

(E) Lack of a legal right of access to the land that is part of the insured title in a policy relating to real property;

(F) Lack of priority of the lien of any insured mortgage over any statutory lien for services, labor, or materials as specifically described in the policy;

(G) Invalidity or unenforceability of any assignment of an insured mortgage subject to certain conditions; or

(H) The priority of any lien or encumbrance over the lien of an insured mortgage;

(14)(A) "Title insurance premium" means the funds paid to the title insurer and to an appointed title insurance agency as consideration

for the amount of liability assumed by a title insurer under a title insurance policy, including all amounts retained by the title insurance agency pursuant to the title insurance agency's contract with the title insurer.

(B) "Title insurance premium" does not include charges for the performance of services related or incidental to title insurance or closings that are disclosed to the person charged, including without limitation:

(i) Title search, abstracting, or title examination fees;

(ii) Title opinion fees;

(iii) Document preparation fees;

(iv) Escrow or closing fees;

(v) Notary fees;

(vi) Attorney's fees;

(vii) Fees incurred to cure defects in title;

(viii) Tax report or tax certification fees;

(ix) Title report fees;

(x) Processing fees;

(xi) Courier fees; and

(xii) Fees incident to the issuance of a title insurance report or policy;

(15) "Title insurance report" means a preliminary report, commitment, or binder issued before the issuance of a title insurance policy containing the requirements, terms, conditions, exceptions, and any other matters incorporated by reference under which a title insurer is willing to issue a title insurance policy;

(16) "Title insurer" means a company authorized under the laws of this state to transact title insurance business; and

(17) "Underwrite" means the acceptance or rejection of risk on behalf of the title insurer.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 1; 2011, No. 515, § 1.

A.C.R.C. Notes. The amendment by Acts 2009, No. 1190, § 1, omitted the phrase "by a title insurer or a title insurance agent" following "proposing to transact" in (12)(B) without striking through the language to indicate its repeal.

Amendments. The 2009 amendment substituted "agency" for "agent" or variant in (4), (5), (6), and (14)(A); inserted "and disburses" in (6); deleted (7), which defined "indemnity agreement," inserted (10), and redesignated subdivisions accordingly; in (11), substituted "an individual affiliated with a title insurance agency who" for "a person that" in (11)(A), in (11)(B)(i) substituted "title insurance agency that" for "licensee who" and "under the supervision of a title insurance agent" for "directed to depository institutions or licensed real estate brokers and agents on behalf and under the direction of a licensee," and substituted "title insurance agency that" for "resident licensee who" in (11)(B)(ii); in (12), inserted "letter" in (12)(A), and deleted (12)(B)(vi); substituted "an appointed" for "its" in (14)(A); and made minor stylistic changes.

The 2011 amendment, in (1), deleted "the process of executing documents in a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title, or" following "means" and substituted "and title insurance premiums out of escrow in connection with a transaction involving either personal or real property, including the transfer of title or creation of a lien on the title" for "in connection with the transaction"; deleted "for a fee" following "a closing" in (2); inserted "closing agent" in

(4); deleted "by a title insurer or title insurance agency" following "agreement" in (5); added (11)(B)(iii); redesignated former (12) as (12)(A) and former (12)(A) through (C) as (12)(A)(i) through (iii); inserted present (12)(B); substituted "title examination fees" for "examination of title" in (14)(B)(i); and, in (14)(B)(ii), deleted "Obtaining a" at the beginning and inserted "fees" at the end.

23-103-403. Requirement for license.

(a)(1) Except as provided in subdivision (a)(2) of this section and § 23-103-404, only an appointed title insurance agency licensed under § 23-64-101 et seq. shall issue title insurance policies, reports, or otherwise transact title insurance business.

(2) An appointed title insurance agency licensed under § 23-64-101 et seq. shall not issue closing protection or issue as an insurer a title insurance policy.

(b) All title insurance policies and reports covering an insurable interest in title to real property located in this state shall be signed by a title insurance agent:

(1) Properly appointed by a title insurer;

(2) Affiliated with a title insurance agency; and

(3) Licensed in this state under this subchapter.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 2; 2011, No. 515, § 2.

Amendments. The 2009 amendment substituted "Only an appointed title insurance agency licensed under § 23-64-101 et seq." for "Other than a title insurer, only a person authorized as a title insurance agent" in (a); in (b), redesignated the last phrase as (b)(3), inserted (b)(1) and (b)(2), substituted "a title insurance agent" for "an agent" in the present introductory language, and made related changes.

The 2011 amendment, in (a)(1), added "Except as provided in subdivision (a)(1) of this section and § 23-103-404" at the beginning, deleted "the business of" following "transact," and inserted "business"; and added (a)(2).

23-103-404. Authorized activities of title insurers.

(a) Subject to the exceptions and restrictions contained in this subchapter, a title insurer may:

(1) Transact only title insurance business;

(2) Reinsure title insurance policies; and

(3) Unless prohibited by the Insurance Commissioner, perform or cause to be performed ancillary activities whether or not in contemplation of or in conjunction with the issuance of a title insurance report or title insurance policy including:

(A) Underwriting title to and furnishing related information about personal property or real property; and

(B) Procuring and furnishing information about relevant personal property.

(b) Only a title insurer may issue closing protection or issue as an insurer a title insurance policy.

History. Acts 2007, No. 684, § 6; 2011, No. 515, § 3.

Amendments. The 2011 amendment added (b).

23-103-405. Title insurers — Limitation of authority — Powers.

(a)(1) An insurer that transacts any class, type, or kind of insurance other than title insurance is not eligible for the issuance or renewal of a license to transact title insurance business in this state.

(2) Title insurance shall not be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

(b) A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest on bonds or mortgages.

(c) Notwithstanding subsection (a) of this section:

(1) If the closing services are provided in Arkansas, the closing agent shall give notice of availability of closing protection to all parties to a transaction in which it is contemplated that title insurance may be issued;

(2) Upon written request by a party to a closing with a licensed title insurance agency with which the title insurer has an agency contract or closing agent with which the title insurer is in privity of contract, the title insurer shall issue a closing protection letter to the requesting party;

(3)(A) Except as provided in subdivision (c)(3)(C) of this section, upon written request by a party to a closing conducted by a person that is not a licensed title insurance agency, the title insurer at its discretion may issue closing protection to the requesting party if the title insurer and the closing agent are in privity of contract.

(B) The contract shall:

(i) Affirmatively state that the title insurer will indemnify third parties for the actions of the closing agent to the extent provided in the closing protection letter; and

(ii) Require the closing agent to make its books and records available to the title insurer for each transaction in which a closing protection letter is issued by the title insurer on behalf of the closing agent except to the extent the books and records are privileged under the attorney-client privilege or otherwise.

(C) The contract requirements contained in subdivisions (c)(3)(A) and (B) of this section do not apply if the closing is conducted outside the State of Arkansas and the closing agent is licensed or otherwise authorized to conduct a closing in the state where the closing is conducted;

(4) The closing protection shall conform to the terms of coverage and form of instrument as may be filed with the Insurance Commissioner and shall indemnify a person solely against loss of closing funds because of the following acts of a closing agent, title insurer's named employee, or title insurance agency:

(A) Theft or misappropriation of closing funds; or

(B) Failure to comply with written instructions from the proposed insured when agreed to by the closing agent, employee, or title insurance agency as it relates to the status of the title to the interest

in land or to the validity, enforceability, and priority of the lien of a mortgage or deed of trust on the interest in land;

(5) The form and amount charged by a title insurer for closing protection coverage shall be filed with the commissioner at least twenty (20) days before the first use of closing protection coverage in the market;

(6) Except as provided in this section, a title insurer shall not provide any other coverage that purports to indemnify against improper acts or omissions of a person with regard to escrow or closing services;

(7) A title insurer shall not issue a closing protection letter unless the title insurer contemplates issuing a title insurance policy to a party to the transaction; and

(8) Issuing closing protection is not a violation of § 23-103-404.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 3; 2011, No. 515, § 4.

Amendments. The 2009 amendment substituted "agency" for "agent" in four places; substituted "closing protection" for "settlement protection" in the introductory language of (3); and made minor stylistic changes.

The 2011 amendment rewrote (c)(1) and (2); inserted present (c)(3) and redesignated the remaining subdivisions accordingly; and added (c)(7) and (8).

CASE NOTES

Negligence.

Bank stated a claim of negligence because of the title company's duty allegedly created by this section to underwrite an Insured Closing Protection Letter which provided coverage for theft and misappropriation and the alleged breach of that duty which caused the bank damage. However, the bank's general claim of negligence was dismissed as it was simply a recitation of the legal elements of negligence. U.S. Bank N.A. ND v. Elender Escrow, Inc., 4:11CV00123JMM, 2011 U.S. Dist. LEXIS 134690 (E.D. Ark. Nov. 21, 2011).

23-103-406. Title insurance agents — Examination of records.

The Insurance Commissioner or title insurer during normal business hours may examine, audit, and inspect any and all books, records, files, and escrow and operating accounts related to title insurance reports and policies maintained by a title insurance agency, its successor in interest, transferee, or receiver under this subchapter.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 4.

Amendments. The 2009 amendment substituted "agency" for "agent," and made minor stylistic changes.

23-103-407. Agency contracts.

(a)(1) A person acting in the capacity of a title insurance agency shall not place business with a title insurer, and a title insurer shall not accept business from a title insurance agency unless a written contract exists between the title insurer and title insurance agency.

(2) The written contract shall establish the responsibilities of the title insurer and title insurance agency and specify the division of the responsibilities if both share responsibility for a particular function.

(3) The written contract shall also contain:

(A) The types of risks that may be undertaken;

(B) The maximum authority or limits of liability;

(C) The territorial limitations;

(D) All terms of compensation for the title insurance agency;

(E) Policies and funds remittance;

(F) Termination provisions;

(G)(i) The date by which all funds and policies due under the contract shall be accounted for to the title insurer.

(ii) The date shall be no later than sixty (60) days after:

(a) Issuance of the policy;

(b) The satisfaction of all requirements and conditions of any report; or

(c) The time specified in the contract if less than sixty (60) days; and

(H) The time in which the title insurance agency has to report and forward to the title insurer all claims filed in writing with the title insurance agency by policyholders or other claimants.

(b) The contract shall not be assigned in whole or in part by the title insurance agency unless as part of a sale of a title insurance agency or its assets and approved in writing by the title insurer.

(c)(1) The title insurer may terminate the contract upon written notice to the title insurance agency under any of the following circumstances:

(A) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agency's license or permit to do business, or the commencement of legal proceedings by the state of the domicile of the title insurance agency, which if successful would lead to the cancellation of the title insurance agency's permit or license to do business;

(B) Material breach of any provision of the contract between the title insurer and the title insurance agency; or

(C) In accordance with any other termination provision of the contract.

(2) Upon the effective date as set forth in the notice of termination from a title insurer unless otherwise agreed to in writing by the title insurer, the title insurance agency shall immediately discontinue all title insurance business on behalf of that title insurer.

(3) This subsection does not relieve the title insurance agency or the title insurer of any other contractual obligation.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 5.

Amendments. The 2009 amendment substituted "Agency" for "Underwriting" in the section heading; substituted "agency" for "agent" or variant throughout the section, and made minor stylistic changes.

23-103-408. Minimum search requirements.

(a) A title insurance report or title insurance policy shall not be issued unless the title insurance agency or title insurance agent has caused to be made a search of the title from the evidence prepared from a title plant or files of the county where the property is located or from the records of the clerk or the ex officio recorder of land records of the county that maintains records relating to real estate and any interest in the county.

(b) The search shall include a review of all matters affecting the title to the property or interest to be insured for a continuous period of not less than the immediately preceding thirty (30) years.

(c) A title insurance policy shall not be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 6.

Amendments. The 2009 amendment substituted "preceding" for "preceeding" in (b), and made minor stylistic changes.

23-103-409. Title insurance agent — Restrictions.

A title insurance agent shall not:

(1) Bind reinsurance on behalf of the title insurer;

(2) Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurer's board of directors if the title insurance agent wrote five percent (5%) or more of the direct premiums of the title insurer written in the previous calendar year as shown on the title insurer's most recent annual statement filed with the Insurance Commissioner, unless the title insurer and the title insurance agent are under common control or ownership;

(3) Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are under common control or ownership; or

(4) Issue a title insurance report or title insurance policy insuring the interest of an insured in real property in this state unless the title insurance agent is licensed under this subchapter and the title insurance report or title insurance policy is signed by a title insurance agent licensed under this subchapter.

History. Acts 2007, No. 684, § 6.

23-103-410. Title insurance inventory maintenance.

(a) The title insurer and the title insurance agency shall each maintain an inventory of all numbered policy forms or policy numbers assigned to the title insurance agency by the title insurer.

(b) If title insurance policies are generated electronically by the title insurer, the title insurer shall maintain the inventory of policy numbers assigned to the title insurance agency.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 7.

Amendments. The 2009 amendment added (b), redesignated the existing text accordingly, and substituted "agency" for "agent" in (a).

23-103-411. Title insurer — Audit.

(a)(1) At least one (1) time each year, a title insurer shall conduct an on-site audit of the escrow and closing practices related to the issuance of title insurance policies, escrow accounts, security arrangements, files, underwriting and claims practices, and policy inventory of the title insurance agencies that the title insurer has authorized to issue title insurance reports or title insurance policies on its behalf.

(2) If the title insurance agency fails to maintain separate escrow or trust accounts for each title insurer it represents, the title insurer shall verify that the funds related to closings in which the title insurer's policies are issued are reasonably ascertainable from the books of account and records of the title insurance agency.

(b)(1) The Insurance Commissioner may promulgate rules setting forth the standards of audit and the form of audit required.

(2) The commissioner may also require the title insurer to provide a copy of its audit reports to the commissioner.

(3) Any audits shall remain confidential unless introduced as evidence at a hearing or court proceeding involving the title insurance agency or agent.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 8; 2011, No. 515, § 5.

Amendments. The 2009 amendment inserted "related to the issuance of title insurance policies and closing protection letters" in (a)(1), and substituted "agency" for "agent" in two places in (a)(2); and inserted "agency or" in (b)(3).

The 2011 amendment deleted "and closing protection letters" following "policies" in (a)(1).

23-103-412. Title insurer — Restrictions.

A title insurer shall not:

(1) Appoint any director, officer, controlling shareholder, or employee of a title insurance agency to serve on the title insurer's board of directors if the title insurance agency wrote five percent (5%) or more of the direct premiums of the title insurer written during the previous calendar year as shown on the title insurer's most recent annual statement on file with the Insurance Commissioner, unless the title insurer and the title insurance agency are under common control or ownership; or

(2) Jointly employ an individual who is employed with the title insurance agency unless the title insurer and the title insurance agency are under common control or ownership.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 9.

Amendments. The 2009 amendment substituted "agency" for "agent" in five places.

23-103-413. Policyholder rights and disclosure.

(a)(1) When a title insurance report includes an offer to issue an owner's title insurance policy covering the resale of owner-occupied residential property, the title insurance report shall be furnished to the purchaser or mortgagor or to the representative of the purchaser-mortgagor as soon as reasonably possible before closing.

(2) The title insurance report furnished to the purchaser-mortgagor shall incorporate the following statement on the first page in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters that are not covered under the terms of the title insurance policy and should be carefully considered.

This report is a written representation as to the condition of title for purposes of providing title insurance and lists all liens, defects, and encumbrances filed of record within the last thirty (30) years that have not been released of record or that are not statutorily expired.

No title insurance agent or any other person other than a licensed Arkansas attorney may provide legal advice concerning the status of title to the property described in the title commitment."

(b)(1) When an owner's title insurance policy has not been requested, a title insurer or a title insurance agency issuing a title insurance policy to a lender in conjunction with a mortgage loan involving real property made simultaneously with the purchase of all or part of the real property securing the loan shall give written notice on a form prescribed or approved by the Insurance Commissioner to the purchaser-mortgagor at the closing.

(2) The notice required by subdivision (b)(1) of this section shall explain:

(A) That a title insurance policy for the lender involving real property is issued for the protection of the mortgage lender and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the real property being purchased;

(B) The coverage that a title insurance policy relating to real property insures and that risks exist for the purchaser-mortgagor of real property that could be insured through the purchase of an owner's title policy involving real property; and

(C) That the purchaser-mortgagor may obtain an owner's title insurance policy at a specified premium.

(3) A copy of the notice signed by the purchaser-mortgagor shall be retained in the closing file for at least five (5) years after the effective date of the lender's title insurance policy.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 10.

Amendments. The 2009 amendment, in the second paragraph of the statement under (a)(2), deleted "affecting title to the land that are" following "encumbrances,"

and inserted "within the last thirty (30) years that have not been released of record or that are not statutorily expired"; and in (b), substituted "agency" for "agent" in (b)(1) and made minor stylistic and punctuation changes.

23-103-414. Record retention requirements.

(a) The title insurer and the title insurance agency shall maintain sufficient records of their affairs, including evidence of underwriting title, determination of insurability, and records of their escrow operations and escrow accounts.

(b) The Insurance Commissioner may prescribe the specific records and documents to be kept and the length of time for which the records shall be maintained.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 11.

Amendments. The 2009 amendment substituted "agency" for "agent" in (a).

23-103-415. Rules promulgated by Insurance Commissioner.

The Insurance Commissioner shall issue rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to implement this subchapter.

History. Acts 2007, No. 684, § 6.

23-103-416. Penalties — Liabilities.

(a) If the Insurance Commissioner determines that a title insurer, title insurance agency, title insurance agent, or any other person has violated this subchapter or any rule or order promulgated under this subchapter, the commissioner may order:

(1)(A) Payment of a monetary penalty not to exceed one thousand dollars ($1,000) for each act or violation and not to exceed an aggregate penalty of ten thousand dollars ($10,000) unless the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter.

(B) If the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter, the penalty shall not exceed five thousand dollars ($5,000) for each act or violation and not exceed an aggregate penalty of fifty thousand dollars ($50,000) in any six-month period; or

(2) Suspension or revocation of the title insurer's, title insurance agency's, title insurance agent's, or other person's license if the title insurer, title insurance agency, title insurance agent, or other person knew or reasonably should have known that the title insurer, title insurance agency, title insurance agent, or other person was in violation of this subchapter.

(b) If an order of rehabilitation or liquidation of the title insurer or of conservation of assets of the title insurer has been entered and the receiver appointed under the order determines that the title insurance agency or title insurance agent or any other person has not complied with this subchapter or any rule or order promulgated under this subchapter and the title insurer suffered any resulting loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and its policyholders and creditors.

(c) This section does not affect the right of the commissioner to impose any other penalties provided under § 23-64-101 et seq.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 12.

Amendments. The 2009 amendment inserted "title insurance agency" throughout the section; substituted "may maintain" for "shall maintain" in (b); and made related and minor stylistic changes.

23-103-417. Access to public records.

(a) A title insurance agent, a title insurance agency, and a person affiliated with a title insurance agency shall:

(1) Have free access to the instruments of record affecting real property filed in any city, county, or state office; and

(2) Be permitted to:

(A) Occupy reasonable space, use equipment, and make memoranda, notations, and copies of instruments of record during the business hours of the city, county, or state office; and

(B) Compile, post, copy, and maintain books, records, and indices.

(b)(1) A title insurance agent, a title insurance agency, and a person affiliated with a title insurance agency has the right of access to any instrument filed of record in a city, county, or state office no later than the close of business of the first business day following the day the instrument was filed.

(2) A fee shall not be charged for providing access to the instrument.

(c) As used in this section, "access" means possession of an instrument sufficient to mechanically reproduce the instrument in the office where the instrument is filed.

(d)(1) A person entitled to access under this section that is denied access may petition immediately to a circuit court of competent jurisdiction.

(2) Upon written complaint of a person or an interested party denied a right provided by this section, the circuit court having jurisdiction shall hear the complaint within seven (7) days of the date the complaint is filed.

(3)(A) In an action or appeal of an action to enforce the rights granted by this section, the court shall assess against a losing party reasonable attorney's fees and other litigation expenses reasonably incurred by a party that has substantially prevailed unless the court finds that the position of the losing party was substantially justified or that

other circumstances make an award of attorney's fees and other litigation expenses unjust.

(B) Expenses shall not be assessed against the State of Arkansas or any of its agencies or departments.

(C) If at trial a defendant has substantially prevailed in the action, the court may assess attorney's fees and litigation expenses against a plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

History. Acts 2009, No. 1190, § 13.

CHAPTERS 104-109

[Reserved]

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER 110

ARKANSAS HORSE RACING LAW

SUBCHAPTER.

1. General Provisions.
2. Arkansas Racing Commission.
3. Franchises Generally.
4. Conduct of Meets.

Effective Dates. Acts 1957, No. 46, § 33: July 1, 1957.

RESEARCH REFERENCES

ALR. Liability for injury or death of participant in horse race at public track. 13 A.L.R.4th 623.

Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race. 36 A.L.R.4th 1169.

Am. Jur. 38 Am. Jur. 2d, Gambling, §§ 56-58.

C.J.S. 38 C.J.S., Gaming, § 8.

CASE NOTES

Cited: In re Armstrong, 217 B.R. 569 (Bankr. E.D. Ark. 1998).

Subchapter 1 — General Provisions

SECTION.
23-110-101. Title.
23-110-102. Inconsistent statutes inapplicable.
23-110-103. Construction.
23-110-104. Disposition of license fees, fines, etc.
23-110-105. Racing passes.

Effective Dates. Acts 1991, No. 1117, § 12: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of the Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 341, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 7, § 12: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 73, § 12: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 2001, No. 61, § 2: became law without Governor's signature. Feb. 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that the distribution of horse racing passes by

members of the General Assembly and constitutional officers results in a statewide distribution of those passes and because of the racial diversity of the membership of the General Assembly, it also further assures that the passes will be distributed in a racially diverse manner; that the General Assembly has great interest in promoting and nourishing tourism within the state and its distribution of passes to out-of-state persons will further the objective of the state to encourage tourism and profit thereby; that this act makes clear that members of the General Assembly and constitutional officers are merely conduits to accomplish the stated purposes of issuance of racing passes and that the passes do not constitute gifts or compensation to the membership of the General Assembly or constitutional officers; and unless this emergency clause is adopted, this act may not go into effect until after the current racing season. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-110-101. Title.

This chapter shall be referred to and may be cited as the "Arkansas Horse Racing Law".

History. Acts 1957, No. 46, § 1; A.S.A. 1947, § 84-2727.

23-110-102. Inconsistent statutes inapplicable.

Section 5-66-116 and all other acts and parts of acts inconsistent with any of the provisions of this chapter are expressly declared not to apply to any person, partnership, group, association, trust, or corporation engaged or participating in racing, or making or contributing to the pari-mutuel or certificate method of wagering, in manner and form as provided for by this chapter, at any race meeting held or conducted by any franchise holder having a license for the holding or conducting of race meetings as provided by this chapter.

History. Acts 1957, No. 46, § 29; A.S.A. 1947, § 84-2755.

CASE NOTES

Cited: Register v. Oaklawn Jockey Club, Inc., 306 Ark. 318, 811 S.W.2d 315 (1991).

23-110-103. Construction.

Nothing contained in this chapter shall in any way be construed to apply to any other method or manner of racing except the racing of horses as provided in this chapter.

History. Acts 1957, No. 46, § 28; A.S.A. 1947, § 84-2754.

23-110-104. Disposition of license fees, fines, etc.

(a) All permits or license fees, excise or privilege taxes, penalties, fines, costs, and other amounts received by the Arkansas Racing Commission under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer the general revenues referred to in subsection (a) of this section to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1957, No. 46, § 30; A.S.A. 1947, § 84-2756.

23-110-105. Racing passes.

(a) The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually, and it shall not be less than the number printed in 1990.

(b)(1) Racing passes provided to and accepted by members of the General Assembly and constitutional officers are to be distributed by them to:

(A) Their constituents, in order to provide a statewide distribution of the racing passes; and

(B) Persons residing outside the State of Arkansas, in order to promote tourism and advance the economic interests of the state.

(2) The passes provided to the members of the General Assembly and constitutional officers are not for their personal use but are for redistribution as provided in this section and therefore do not constitute gifts or compensation to members of the General Assembly and constitutional officers for the purposes of any law of this state.

(c) This section does not prohibit members of the General Assembly and constitutional officers from redistributing racing passes to other members of the General Assembly or other state constitutional officers.

History. Acts 1991, No. 1117, § 5; 1993, No. 341, § 5; 1995, No. 7, § 6; 1997, No. 73, § 6; 2001, No. 61, § 1.

A.C.R.C. Notes. Acts 2014, No. 266, § 6, provided: "RACING PASS RESTRICTIONS. The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall not be less than the number printed in 1990.

"The provisions of this section shall be in effect only from July 1, 2014 through June 30, 2015."

Subchapter 2 — Arkansas Racing Commission

SECTION.
23-110-201. Arkansas Racing Commission — Creation — Members.
23-110-202. Officers.
23-110-203. Proceedings.
23-110-204. Powers and duties.
23-110-205. Hearings.

Effective Dates. Acts 1975, No. 912, § 3: Apr. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law members of the Arkansas State Racing Commission are entitled to receive only six cents (6¢) per mile for attending meetings for the Commission; that this mileage allowance is totally inadequate to cover the travel expenses of the members of the Commission and that the mileage allowance for members of the Commission should be established at the same rate as is prescribed by law for employees of the State of Arkansas; that this Act is designed to provide the same mileage allowance to members of the Arkansas State Racing Commission as is authorized employees of the State of Arkansas and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 776, § 9: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1987, No. 440, § 8: Mar. 26, 1987. Emergency clause provided: "It is hereby found and declared that horse racing and activities related thereto in Arkansas have had a most significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, which is threatened by increased competition from racing in other states, including new and improved plants and programs in surrounding and nearby states, and it is imperative that Arkansas franchise holders be able to increase purses and improve facilities in order to keep up with competition and hold and improve Arkansas' premier and traditional position in horse racing; and that in order to accomplish these goals (essential to the welfare of the state and its citizens and residents) the amendments and purposes set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the protection of the public peace, health, and safety, shall take effect, and be in full force, immediately upon its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governer. If the bill is neither approved nor vetoed by the Governor, it shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission's authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission's power to assess such fees and penalties is imperative to the Arkansas Racing Commission's ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-110-201. Arkansas Racing Commission — Creation — Members.

(a) A commission consisting of five (5) members, to be known as the "Arkansas Racing Commission", is created and established.

(b) The members of the commission shall be appointed by the Governor for terms of five (5) years. The term of office shall commence on January 15 and shall end on January 14 of the fifth year following the year in which that regular term commenced.

(c) Any vacancies arising in the membership of the commission for any reason other than the expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor, to be thereafter effective until the expiration of the regular term.

(d)(1) Each congressional district shall be represented on the commission.

(2) Each member of the commission shall have been a resident of Arkansas for not less than ten (10) years next preceding the date of his

or her appointment and shall be a qualified voter at the time of his or her appointment.

(3) No person who is officially connected with, employed by, financially interested in, or related to, within the third degree of consanguinity or affinity, any officer or stockholder of an applicant for, or any officer or stockholder of a holder of, a franchise applied for or issued under or pursuant to the provisions of this chapter shall be eligible to serve as a member of the commission.

(e) The Governor shall have the right to remove any member of the commission for cause.

(f) Before entering upon his or her duties, each member of the commission shall take, subscribe, and file in the office of the Secretary of State an oath to support the United States Constitution and the Arkansas Constitution and to faithfully perform the duties of the office upon which he or she is about to enter.

(g) Members of the commission shall not receive compensation for their services, but, within the limitations of appropriations made available by the General Assembly, each member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1957, No. 46, §§ 2-4, 7; 1965, No. 176, § 1; 1975, No. 912, § 1; 1981, No. 776, § 5; A.S.A. 1947, §§ 84-2728 — 84-2730, 84-2733, 84-2733.1; Acts 1997, No. 250, § 226.

Publisher's Notes. The terms of the members of the Arkansas Racing Commission are arranged so that one term expires every year.

23-110-202. Officers.

(a) The Governor shall from time to time select from the membership of the Arkansas Racing Commission a chair and a vice chair.

(b)(1) The Director of the Department of Finance and Administration shall be ex officio secretary of the commission unless the Governor shall designate another person from the Revenue Division of the Department of Finance and Administration to serve in that capacity, but the Secretary of the Arkansas Racing Commission shall not be a member of the commission nor shall he or she have a vote on matters coming before it.

(2) The secretary shall be the commission's executive officer and shall administer the provisions of this chapter and the rules, regulations, and orders established under this chapter.

(3) By resolution duly adopted, the commission may delegate to the secretary any of the powers or duties vested in or imposed upon the commission by this chapter, and the delegated powers and duties may be exercised by the secretary in the name of the commission.

(4) The secretary shall be custodian of all property held in the name of the commission and shall be the ex officio disbursing agent of all funds available for its use.

(5) The secretary shall furnish bond to the state, with a corporate surety thereon, in the penal sum of twenty-five thousand dollars ($25,000), conditioned that he or she will faithfully perform his or her

duties of office and properly account for all funds received and disbursed by him or her as secretary.

(6) Within such limitations as may be provided by appropriations therefor, the secretary may employ such assistants and other personnel as are, in his or her opinion, necessary to properly administer the provisions of this chapter.

History. Acts 1957, No. 46, §§ 5, 6; A.S.A. 1947, §§ 84-2731, 84-2732.

A.C.R.C. Notes. The operation of subdivision (b)(5) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials, and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subdivision may again become effective upon cessation of coverage under that program. See § 21-2-703.

23-110-203. Proceedings.

(a)(1) All meetings of the Arkansas Racing Commission shall be public, and it shall keep a complete record of its transactions, findings, and determinations.

(2) The rules may provide for regular meetings and may provide for special meetings at the call of the Chair of the Arkansas Racing Commission or of the Vice Chair of the Arkansas Racing Commission if the vice chair becomes for any reason the acting chair, either at his or her own instance or upon the written request of at least three (3) members.

(3) Meetings shall be held at such place as in each instance may suit the commission's convenience.

(b)(1) A quorum for the transaction of business shall consist of not fewer than three (3) members present at any regular or special meeting, and the affirmative vote of that number shall be necessary for the disposition of any business.

(2) Voting by proxy is prohibited.

History. Acts 1957, No. 46, § 5; 1965, No. 176, § 2; A.S.A. 1947, § 84-2731.

23-110-204. Powers and duties.

(a) Subject to the limitations and conditions as provided in this chapter or other applicable law, the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward, and, in exercising its jurisdiction, but without necessarily being limited to the following enumeration, it shall be the function, power, and duty of the commission to:

(1) Grant franchises to conduct horse races;

(2) Approve dates for each racing meet and issue permits therefor;

(3) Issue licenses to:

(A) An apprentice jockey;

(B) An assistant trainer;

(C) An attendant;

(D) A franchise holder's employee;

(E) A horse owner;

(F) A horse trainer;

(G) A horseshoer;

(H) A jockey agent;

(I) A person riding horses on the grounds of the licensed racetrack, including an exercise rider, a jockey, and an outrider;

(J) A stable employee or contractor, including a groom and a hotwalker;

(K) A valet;

(L) A veterinarian;

(M) A veterinarian assistant; and

(N) An authorized agent, a vendor, contractor, or other person employed or involved with the care of horses or the business of horse racing on the grounds of the licensed racetrack;

(4) Establish by rule the license fees, not to exceed one hundred fifty dollars ($150) per applicant, for a license under subdivision (a)(3) of this section;

(5) Collect and deposit into the State Treasury all fees for franchises and licenses for all taxes, other imposts, and all other moneys due the State of Arkansas in relation to horse racing;

(6) Hear and determine all matters properly coming before the commission and grant rehearings thereon; and

(7) Take such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas.

(b)(1) The commission shall have full, complete, and sole power and authority to:

(A) Impose fines in an amount not to exceed one hundred thousand dollars ($100,000) per violation of a rule of the commission;

(B) Issue orders;

(C) Order the forfeiture of purse money won by a disqualified horse;

(D) Prescribe conditions under which horse racing shall be conducted by a franchise holder;

(E) Promulgate rules;

(F) Redistribute forfeited purse money; and

(G) Suspend or revoke licenses.

(2) The authority granted to the commission under this subsection shall be exercised in a reasonable manner.

(3) The holder of a franchise or a taxpayer may appeal an action of the commission to the Pulaski County Circuit Court.

(c)(1) The commission shall have no right or power to determine who shall be officers or employees of any franchise holder.

(2)(A) However, the commission may by rule require that all officers, employees, or agents of the franchise holder who are in charge of, or whose duties relate directly to, the running of races and the handling of any funds which may be wagered on any race are to be approved by the commission.

(B) The commission may compel the discharge of any official, employee, or agent of the franchise holder who fails or refuses to comply with the rules, regulations, or orders of the commission, or who, in the opinion of the commission, is guilty of fraud or dishonesty.

(d) For the purpose of regulating its own procedure and carrying out its functions, powers, and duties, the commission shall have the authority from time to time to make, amend, and enforce all necessary or desirable rules not inconsistent with law.

(e)(1)(A) An applicant shall be fingerprinted to determine an applicant's suitability to be issued a license as a horse owner, horse trainer, jockey, or jockey agent.

(B) The fingerprints shall be forwarded by the Arkansas Racing Commission to the Department of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background check, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Department of Arkansas State Police to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background check and the national criminal history record check to the Arkansas Racing Commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national criminal history record check of the applicant shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (e)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background check or national criminal history record check shall be required of an applicant for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

History. Acts 1957, No. 46, §§ 5, 8, 16; A.S.A. 1947, §§ 84-2731, 84-2734, 84-2742; Acts 1987, No. 440, § 1; 2007, No. 856, § 1; 2013, No. 350, §§ 1, 2.

Publisher's Notes. Acts 1987, No. 440, § 5, provided: "The purpose of this act is to put the franchise holder in a position to maintain and improve its high level of racing operations in the face of increasing and severe competition by distributing adequate purses and undertaking and completing substantial programs of construction, reconstruction, and maintenance of facilities. It is intended that the franchise holder shall proceed in reliance upon the provisions of this act to incur sufficient debt to undertake a program of construction, reconstruction, and mainte-

nance of facilities in the immediate future and to proceed with it in an orderly manner. The franchise holder shall periodically keep the commission advised of the nature of and progress made concerning its programs of construction, reconstruction, and maintenance of facilities."

Acts 1987, No. 440, § 6, provided: "The provisions of this act shall be effective as of January 1, 1987, and thereafter. To this end, the provisions of this act shall be applicable to the racing meet conducted in calendar year 1987 as though it had been in effect when that meet started except as to:

"(a) the increased amounts to be withheld on races where the wagerer is required to select more than one (1) horse; and

"(b) the amount over six percent (6%), being fifty-five hundredths of one percent (.55%), paid to the commission for the use and benefit of the State of Arkansas under the provisions of § 23-110-408(a) [repealed]. The increased and additional amounts specified in (a) and (b) above can be withheld only on races run after March 26, 1987. Also, all actions taken by the franchise holder, commission, and city, town, or county prior to and subsequent to the enactment of this act which are in accordance with the provisions of this act are hereby authorized, approved, and ratified."

Amendments. The 2013 amendment deleted "horse owners, horse trainers, jockeys, and jockey agent" from the introductory language of (a)(3); added (a)(3)(A) through (N); substituted "a license under subdivision (a)(3) of this section" for "horse owners, horse trainers, jockeys, and jockey agents" in (a)(4); and rewrote (b).

CASE NOTES

Analysis

Right to Race.
State Action.

Right to Race.

There is nothing in the Arkansas statutes or the rules of the Racing Commission that states that a licensed owner or jockey has a right to race. Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980), cert. denied, Evans v. Arkansas Racing Com., 451 U.S. 910, 101 S. Ct. 1980 (1981).

State Action.

The action of a private corporation, which had a public franchise to operate the only state thoroughbred race track, in failing to recommend a thoroughbred horse owner and trainer for a license and in failing to provide him with stall space before any hearing was held was not state action. Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980), cert. denied, Evans v. Arkansas Racing Com., 451 U.S. 910, 101 S. Ct. 1980 (1981).

Cited: Arkansas State Racing Comm'n v. Sayler, 249 Ark. 913, 462 S.W.2d 472 (1971).

23-110-205. Hearings.

(a)(1) In the event any franchise holder or person is aggrieved by any action of the Arkansas Racing Commission, he or she shall be entitled to a hearing by the commission.

(2)(A) The hearing shall be held at such place in the State of Arkansas and at such time as the commission may designate.

(B) Notice shall be served on the parties affected by mailing to those parties by registered United States mail the notice of the time and place that the hearing will be held.

(3) In conducting the hearing, the commission shall not be bound by technical rules of evidence.

(4)(A) Any of the parties affected by the hearing may be represented by counsel and shall have the right to introduce evidence.

(B) In its discretion, the commission may likewise be represented by counsel at the hearing, and the counsel shall participate in the conduct of the hearing for and on behalf of the commission.

(b)(1)(A) For purposes of conducting the hearing, the commission shall have the power to administer oaths, issue subpoenas, and compel the attendance and testimony of witnesses.

(B) Any person who has been served with a subpoena to appear and testify issued by the commission in the course of an inquiry or hearing conducted under the provisions of this chapter and who refuses or neglects to appear or testify relative to the hearing as commanded in the subpoena shall be guilty of a violation and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

(2) In connection with any hearing, the commission or the aggrieved may cause the deposition of witnesses within or without the state to be taken in the manner prescribed by existing statutes for the taking of depositions in this state.

(c) All hearings shall be held before at least three (3) members of the commission, and the concurrence of at least three (3) members of the commission shall be necessary for any finding or order.

(d)(1) At the conclusion of the hearing, the commission shall make its findings to be the basis for the action taken by the commission.

(2) The findings and order shall be subject to review in Pulaski County Circuit Court, from which an appeal may be taken to the Supreme Court.

History. Acts 1957, No. 46, § 19; 1965, No. 176, § 3; A.S.A. 1947, § 84-2745; Acts 2005, No. 1994, § 154.

CASE NOTES

Analysis

In General.
Evidence.

In General.

Applicant for a franchise aggrieved at action of commission in rejecting application is entitled to a hearing. Dixie Downs, Inc. v. Arkansas Racing Comm'n, 219 Ark. 356, 242 S.W.2d 132 (1951) (decision under prior law).

Evidence.

Hearsay evidence that normally would be excluded in a trial may be used in a hearing before an administrative agency. Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980), cert. denied, Evans v. Arkansas Racing Com., 451 U.S. 910, 101 S. Ct. 1980 (1981).

Subchapter 3 — Franchises Generally

SECTION.
23-110-301. Horse racing permitted — Limitations.
23-110-302. Application — Issuance of temporary franchise — Hearing and appeal.
23-110-303. Approval of electors required.
23-110-304. Election.
23-110-305. Construction of racing plant — Issuance of permanent franchise.
23-110-306. Subsequent referendum elections.
23-110-307. Franchise granted prior to July 1, 1957.
23-110-308. Employees.

Effective Dates. Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Duty of Ordinary Care.

Racetrack owed a duty to exercise ordinary care to patron who placed what turned out to be a winning bet but machine failed to issue a conforming ticket. Register v. Oaklawn Jockey Club, Inc., 306 Ark. 318, 811 S.W.2d 315 (1991), modified, 306 Ark. 321, 821 S.W.2d 475 (1991).

23-110-301. Horse racing permitted — Limitations.

(a)(1) Horse racing may be conducted in all political subdivisions of the State of Arkansas, in addition to the City of Hot Springs, Garland County, Arkansas, where horse racing has been made lawful by Arkansas Constitution, Amendment 46, but only by the holder of a franchise granted by the Arkansas Racing Commission.

(2) The commission may grant a franchise only to a corporation organized under the laws of this state.

(b)(1) Franchises may not be granted by the commission to individuals, partnerships, associations, trusts, or to any others except corporations as provided in this section.

(2) However, in the event that the limitations contained in subdivision (b)(1) of this section are declared unconstitutional, then the commission may grant franchises to individuals, partnerships, associations, trusts, and corporations.

(c) Wherever the word "corporation" shall appear in this chapter, it shall be deemed to include the enumeration in subdivision (b)(2) of this section in the event of any declaration of unconstitutionality.

(d) The commission may not grant more than one (1) franchise for conducting horse racing meets in a single county.

(e) No franchise or temporary franchise shall be granted whenever the cost of the plant proposed to be constructed, including lands, buildings, facilities, and equipment, shall be less than three million dollars ($3,000,000).

History. Acts 1957, No. 46, §§ 9, 11; A.S.A. 1947, §§ 84-2735, 84-2737.

23-110-302. Application — Issuance of temporary franchise — Hearing and appeal.

(a) Any corporation desiring a franchise to conduct horse racing in any county in which a current franchise for horse racing is not held by another shall file its application therefor with the Arkansas Racing Commission and deposit with the commission the sum of five thousand dollars ($5,000) to cover the expenses of publishing legal notices and to pay a pro rata part of the costs of the general election, as provided in this chapter.

(b) The application shall set forth:

(1) The name of the corporation and the address of its principal office;

(2) The names and addresses of all of the corporation's officers, directors, and stockholders;

(3) The name and address of the corporation's agent for service of process;

(4) The corporation's latest financial statements;

(5) The estimated amount of funds which the corporation proposes to spend for the acquisition of a site, the construction thereon of buildings and facilities, and the purchase of equipment for conducting racing meets;

(6) Copies of architectural plans and specifications for the buildings and facilities; and

(7) Such other information and requirements as the commission shall determine as being necessary to enable it to pass upon the application.

(c)(1)(A) Immediately upon the filing of each application, the commission shall:

(i) Investigate the personal background and financial responsibility of the officers, directors, and principal stockholders of the corporation;

(ii) Examine the plans and specifications of the buildings and facilities proposed to be constructed; and

(iii) Take into consideration such other facts and conditions as it shall find necessary or desirable in the premises.

(B) Within ninety (90) days after the date of the filing of any application, the commission shall grant, or refuse to grant, a temporary franchise to the corporation.

(2) However, in all instances the commission shall give the applicant and all others who shall have filed written requests to be heard on the question not less than ten (10) days' notice of the date it proposes to formally consider the application, and all interested parties shall have the right to appear before the commission and be heard. The commission shall make a record of its proceeding at each hearing.

(d)(1) Should the commission refuse to grant a temporary franchise, it shall set forth in writing its reasons for the refusal. A copy of the writing shall immediately be sent to the applicant by registered United States mail to the address named in the application.

(2) Within sixty (60) days after the date of any refusal, the applicant may file with the commission amendments to the application for the purpose of overcoming any of the objections on which the commission based its refusal to grant a temporary franchise. Within thirty (30) days after receipt of any amendments, the commission shall either confirm its original refusal, or it may grant a temporary franchise.

(3) Either within twenty (20) days following the date of original refusal or within twenty (20) days following the date of refusal after the filing of any amendments, the applicant may appeal to Pulaski County Circuit Court. The appeal shall be tried de novo on the record of the hearing before the commission.

(4) An appeal may be taken by the commission or by the applicant from the circuit court to the Supreme Court, which shall likewise be tried de novo.

(5) The mandate of the court shall be filed with the commission.

(e)(1) Should the commission grant a temporary franchise on its own motion or based upon the decision of the court, then the fact of the grant shall be certified by the commission to the Secretary of State, and the five thousand dollars ($5,000) deposited with it under the provisions of subsection (a) of this section shall be paid over to the Secretary of State by the commission.

(2) Should a temporary franchise not be granted under this section, the funds deposited with the commission under subsection (a) of this section shall be refunded to the corporation by the commission.

History. Acts 1957, No. 46, § 12; 1965 (2nd Ex. Sess.), No. 8, § 2; A.S.A.1947, § 84-2738.

23-110-303. Approval of electors required.

The Arkansas Racing Commission shall not be authorized to grant, nor shall it grant, a franchise to any corporation to conduct horse racing in any county in this state unless the commission has been authorized to grant the franchise as expressed by the approval of a majority of the

qualified electors of the state voting on the proposition at the regular statewide biennial general election, as set forth in this chapter.

History. Acts 1957, No. 46, § 10; 1961, No. 57, § 1; 1965 (2nd Ex. Sess.), No. 8, § 1; A.S.A. 1947, § 84-2736.

CASE NOTES

Cited: Swanberg v. Tart, 300 Ark. 304, 778 S.W.2d 931 (1989).

23-110-304. Election.

(a)(1) After receipt of the certification provided for in § 23-110-302(e), the Secretary of State shall cause to be published by one (1) insertion in a newspaper of general circulation published in each county of this state, not less than thirty (30) days nor more than sixty (60) days before the next general election, a notice reading substantially as follows:

"NOTICE is hereby given that at the next general election the following question will be placed upon the ballot for the approval or rejection by the qualified electors of the state voting at such general election:

"Shall the Arkansas Racing Commission be authorized to grant a franchise to conduct horse racing in County, Arkansas?

"Given under my hand on this day of, 20.....

Secretary of State of the State of Arkansas".

(2) If there is no such newspaper published in any county, the notice may be published in any newspaper having a general circulation in the county.

(b) Within the time prescribed by law for the certification of other questions to be submitted to a vote of the people at a general election, the Secretary of State shall duly certify to the county boards of election commissioners of the several counties of the state the question as set forth in the notice provided for in subsection (a) of this section.

(c) The county board of election commissioners of each county shall cause to be printed on the general election ballot the following:

"Shall the Arkansas Racing Commission be authorized to grant a franchise to conduct horse racing in County, Arkansas?

FOR authorizing the Arkansas Racing Commission to grant a franchise to conduct horse racing in County, Arkansas ☐

AGAINST authorizing the Arkansas Racing Commission to grant a franchise to conduct horse racing in County, Arkansas ☐".

(d)(1) The county boards of election commissioners shall canvass the vote and, as in the instance of other statewide measures voted on by the people, certify the results to the Secretary of State who shall forthwith tabulate all returns so received by him or her and, by published notice in a newspaper having a statewide circulation, proclaim the result of the election setting out in the proclamation the total vote for and against the question submitted as provided in subsection (c) of this section.

(2) The result of the election as so proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of publication of the proclamation, and all contests in relation thereto shall be under the general election laws of this state.

(3) The Secretary of State shall file a certified copy of the proclamation with the Arkansas Racing Commission, and the commission shall immediately notify the corporation of the result of the election.

(4) If a majority of the qualified electors of the state voting on the question vote against authorizing the commission to grant the franchise to conduct horse racing in the county, the temporary franchise held by the corporation shall, ipso facto, be null and void as of the final date on which a contest of the results of the election may be commenced, or, in the event of contest, upon the date of final determination of the issue.

(e) By use of the moneys deposited with the Secretary of State under the provisions of § 23-110-302(e), the Secretary of State shall first pay the cost of publication of legal notices required under this section. Any funds which remain from the deposit shall be paid over in equal amounts to the treasurers of the several counties of the state for credit to the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1957, No. 46, § 13; 1961, No. 57, § 2; 1965 (2nd Ex. Sess.), No. 8, § 3; A.S.A. 1947, § 84-2739.

23-110-305. Construction of racing plant — Issuance of permanent franchise.

(a)(1)(A) If a majority of the qualified electors of the state voting on the question vote for authorizing the Arkansas Racing Commission to grant a franchise to conduct horse racing in the county, the corporation holding a temporary franchise shall, within ninety (90) days following the date of receipt of notification thereof from the commission as provided in § 23-110-304(d), acquire a site and commence the construction of buildings and facilities which it proposes to use in conducting horse racing meets.

(B) Failure of the corporation to acquire a site and commence construction within the ninety-day period shall constitute a forfeit of the temporary franchise.

(C) The commission shall cancel the temporary franchise of any holder of such a franchise, and the cancellation shall constitute a forfeit thereof by the corporation if the:

(i) Holder of a temporary franchise acquires a site and commences construction within the ninety-day period but fails to complete construction and be open for business within one (1) year next following the end of the ninety-day period;

(ii) Construction by the holder of a temporary franchise is not in substantial compliance with the plans and specifications theretofore filed with, and approved by, the commission; or

(iii) Aggregate total of costs of acquisition of a site, construction of buildings and facilities, and purchase of equipment by the holder of a temporary franchise is less than three million dollars ($3,000,000).

(2) However, nothing contained in this section shall be so construed as to prohibit mutual agreement on the part of the commission and the corporation to making such changes in the plans and specifications for construction as may be deemed necessary or desirable, but no changes may be agreed to which will have the effect of reducing the total aggregate cost of plant and equipment below three million dollars ($3,000,000).

(b)(1) Upon completion of any plant, within the time, in the manner, and at the minimum cost as provided in subsection (a) of this section and upon the payment of a franchise fee in the amount of twenty-five thousand dollars ($25,000) to the commission by the holder of the temporary franchise, the commission shall issue its franchise in exchange for the temporary franchise held by the corporation. The corporation may then proceed to conduct horse racing meets in accordance with the provisions of this chapter or other applicable law.

(2) The franchise shall thereafter be effective in the hands of the corporation unless and until terminated by operation of law, or sooner if terminated by the commission based upon the corporation's failure to comply with applicable horse racing laws or by the voluntary forfeiture of the franchise by the franchise holder.

History. Acts 1957, No. 46, § 15; 1965 (2nd Ex. Sess.), No. 8, § 4; A.S.A. 1947, § 84-2741; Acts 2001, No. 1553, § 54.

CASE NOTES

Cited: Swanberg v. Tart, 300 Ark. 304, 778 S.W.2d 931 (1989).

23-110-306. Subsequent referendum elections.

(a) After the elapse of not less than two (2) years next following the date of any election conducted pursuant to § 23-110-304, upon petitions filed with it containing the signatures of qualified electors of the county of not less than fifteen percent (15%) of the total number voting in the election for county clerk of the county at the next preceding general

election, together with a sum of money estimated by the county board of election commissioners as sufficient to pay all expenses of the election, the board shall call a special election in accordance with § 7-11-201 et seq. on the proposition of continuing horse racing in the county.

(b)(1) The proposition printed on the ballot shall be "FOR Horse Racing" and "AGAINST Horse Racing".

(2) By published notice, the board shall proclaim the results of the election and shall also certify the results to the commission.

(3) All contests in relation to the results of the election shall be commenced within twenty (20) days next following the date of publication of notice as given pursuant to this subsection.

(c) If a majority of the qualified electors of the county voting on the question shall disapprove the continuance of horse racing, the franchise held by the corporation shall, ipso facto, be null and void as of the final date on which a contest of the results of the election may be commenced or, in the event of contest, upon the date of final determination of the issue.

History. Acts 1957, No. 46, § 14; A.S.A. 1947, § 84-2740; Acts 2005, No. 2145, § 60; 2007, No. 1049, § 82; 2009, No. 1480, § 100.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

Cross References. Election laws, § 7-1-101 et seq.

23-110-307. Franchise granted prior to July 1, 1957.

(a) Any franchise granted prior to July 1, 1957, to conduct horse racing in this state is validated, and the action of the authority granting the franchise is ratified and confirmed.

(b) Whether or not the franchise has been granted for a definite period of time, the holder of such a franchise shall, upon the payment of an additional franchise fee in the amount of ten thousand dollars ($10,000) and the surrender of the franchise now held by it, be granted by the Arkansas Racing Commission a franchise for horse racing in the county covered by the surrendered franchise. This franchise shall continue in effect so long as the holder thereof shall comply with all applicable laws of this state relating to horse racing or until the rights thereunder shall terminate by operation of law making horse racing unlawful in the area covered by the franchise or until the forfeit of the franchise by the holder thereof.

History. Acts 1957, No. 46, § 10; A.S.A. 1947, § 84-2736.

23-110-308. Employees.

(a)(1) Each franchise holder under this chapter shall require each of its employees to complete a written application for employment. Among other things, the application shall state:

(A) Whether the applicant is a registered voter in Arkansas; and

(B) If the applicant is a registered voter in Arkansas, the date on which the applicant became a registered voter in Arkansas.

(2) Each application shall be signed by the applicant. If the information contained in the application is false, then the applicant shall be guilty of a misdemeanor and upon conviction shall be fined in an amount of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(b)(1) At least eighty percent (80%) of the employees of each franchise holder under this chapter shall be registered voters in Arkansas, excluding employees in the franchise holder's pari-mutuel department and the following professional racing officials:

(A) Stewards;

(B) Judges;

(C) Racing secretary;

(D) Starter;

(E) Clerk of scales;

(F) Paddock judge;

(G) Patrol judges; and

(H) Identifier.

(2) At least sixty percent (60%) of the employees in the franchise holder's pari-mutuel department shall be registered voters in Arkansas.

(c)(1) The Arkansas Racing Commission is authorized to examine the applications of all employees of any franchise holder, and if the franchise holder is found by the commission to have fewer than the required number of employees who are registered voters in Arkansas, then the franchise holder shall be allowed forty-eight (48) hours, when so ordered by the commission, to make the necessary adjustments in its employees so as to be in compliance with this section.

(2) In the event the franchise holder fails or refuses to comply with a commission order, then it shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History. Acts 1969, No. 280, §§ 1-3; A.S.A. 1947, §§ 84-2761 — 84-2763; Acts 2005, No. 1994, § 155.

A.C.R.C. Notes. Acts 2005, No. 1994, § 155 purported to amend this section. However, the language set out by Act 1994 as this section was an apparently erroneous combination of two separate Code sections. As a result, the Arkansas Code Revision Commission conluded that no changes were made to this section by Acts 2005, No. 1994, § 155. Acts 2005, No. 1994, § 155 read as follows:

"23-110-308. Employees.

"(a)(1) Each franchise holder under this chapter shall require each of its employees to complete a written application for employment. Among other things, the application shall state:

"(A) Whether the applicant is a registered voter in Arkansas; and

"(i) Holder of a temporary franchise acquires a site and commences construction within the ninety-day period but fails to complete construction and be open for business within one (1) year next following the end of the ninety-day period;

"(ii) Construction by the holder of a temporary franchise is not in substantial compliance with the plans and specifications theretofore filed with, and approved by, the commission; or

"(iii) Aggregate total of costs of acquisition of a site, construction of buildings and

facilities, and purchase of equipment by the holder of a temporary franchise is less than three million dollars ($3,000,000).

"(2) However, nothing contained in this section shall be so construed as to prohibit mutual agreement on the part of the commission and the corporation to making such changes in the plans and specifications for construction as may be deemed necessary or desirable, but no changes may be agreed to which will have the effect of reducing the total aggregate cost of plant and equipment below three million dollars ($3,000,000).

"(b)(1) Upon completion of any plant, within the time, in the manner, and at the minimum cost as provided in subsection (a) of this section and upon the payment of a franchise fee in the amount of twenty-five thousand dollars ($25,000) to the commission by the holder of the temporary franchise, the commission shall issue its franchise in exchange for the temporary franchise held by the corporation. The corporation may then proceed to conduct horse racing meets in accordance with the provisions of this chapter or other applicable law.

"(2) The franchise shall thereafter be effective in the hands of the corporation unless and until terminated by operation of law, or sooner if terminated by the commission based upon the corporation's failure to comply with applicable horse racing laws or by the voluntary forfeiture of the franchise by the franchise holder."

Subchapter 4 — Conduct of Meets

SECTION.
23-110-401. Accordance with license required.
23-110-402. Number of racing days — Sunday racing — Approval of programs.
23-110-403. Application for license to conduct meet — Issuance.
23-110-404. [Repealed.]
23-110-405. Wagering — Penalty for improper wagering.
23-110-406. Disposition of wagering money — Payment to winning bettors required — Exceptions.
23-110-407. Disposition of wagering money — Portion for franchise holder.
23-110-408. [Repealed.]
23-110-409. Disposition of wagering money — Arkansas Racing Commission Purse and Awards Fund.
23-110-410. Disposition of wagering money — Breaks.
23-110-411. Admission tax.
23-110-412. Record keeping by franchise holder — Audit.
23-110-413. Access to meets, books, records, etc.
23-110-414. Franchise holder required to give bond.
23-110-415. Failure to pay tax.

Preambles. Acts 1967, No. 130, § 5, in part, contained a preamble which read: "In order to further encourage the breeding of thoroughbred horses in Arkansas and to encourage owners and trainers of thoroughbred horses to establish homes, headquarters and thoroughbred horse farms in Arkansas...."

Effective Dates. Acts 1961, No. 3, § 2: Jan. 18, 1961. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that additional revenue is needed by the State of Arkansas and the City of Hot Springs in order that each may more effectively carry out its functions as provided by law, and that an extension of the annual Spring Race Meet in Hot Springs, as authorized only by this measure, will produce substantial increased revenues for the State and City for said purposes. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force on and after the date of its passage and approval."

Acts 1965, No. 142, § 5: Mar. 8, 1965. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas: (a) that traffic accidents resulting in injuries

and deaths of persons and damages to property are increasing at an alarming rate; (b) that present revenues for employment of personnel in the Department of Arkansas State Police are wholly inadequate to properly handle the problem of highway safety; and (c) that only the provisions of this act will tend to provide funds in amounts sufficient to employ the necessary personnel to patrol the highways and thereby reduce the incidence of highway accidents. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of public peace, health and safety shall take effect and be in full force on and after its passage and approval."

Acts 1973, No. 780, § 5: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Sixty-Ninth General Assembly has provided additional funds for the support of the Police Services Division of the Department of Public Safety from the General Revenues of the State; that since such additional General Revenue funds are provided, it is desirable that certain funds heretofore designated as Special Revenues for the support of the State Police be hereafter designated as General Revenues, and that it is essential that this Act become effective on July 1, 1973, in order to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1973."

Acts 1975, No. 352, § 3: Mar. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to enable the State Racing Commission to adequately and efficiently regulate the conduct of horse and greyhound racing meets in this State it is necessary to establish appropriate fees for the owners, trainers, jockeys, and jockey agents at such racing meets. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 672, § 5: Mar. 30, 1979. Emergency clause provided: "There is presently authority for a total of sixty-two racing days during a calendar year but a single meet cannot under present law exceed 50 racing days. Great expense is incurred by the franchise holders, owners, trainers, jockeys and others in preparing for a racing meet, and because of inclement weather and other circumstances, it appears that more flexibility is needed as to the maximum number of days in any single meet in order to insure a successful operation. This also inures to the economic benefit of the State of Arkansas and the city where the meet is held. Present revenue will continue and additional revenue may be made available for needed public purposes. This Act grants such flexibility without which the above recited benefits will not be available. Therefore, and emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force on and after the date of its passage and approval."

Acts 1979, No. 733, § 4: Apr. 5, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities in which horse racing meets are conducted are in serious need of additional funds for providing additional police and fire protection, construction and maintenance of streets and providing other municipal services; that this Act is designed to provide necessary additional funds for such cities and should be given effect immediately in order that such cities can receive such additional funds from odd cents and breaks at the 1979 horse racing meet. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 440, § 8: Mar. 26, 1987. Emergency clause provided: "It is hereby found and declared that horse racing and activities related thereto in Arkansas have had a most significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, which is threatened by increased competition from racing in other states, including new and improved plants and programs in surrounding and nearby states, and it is imperative that Arkansas franchise holders be able to increase purses and improve facilities in order to keep up with competition and hold and

improve Arkansas' premier and traditional position in horse racing; and that in order to accomplish these goals (essential to the welfare of the state and its citizens and residents) the amendments and purposes set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the protection of the public peace, health, and safety, shall take effect, and be in full force, immediately upon its passage and approval."

Acts 1988 (3rd Ex. Sess.), No. 14, § 4: Feb. 9, 1988. Emergency clause provided: "The development of thoroughbred horse breeding in Arkansas with its attendant economic benefits to the State and its citizens, have had a most favorable impact on the economy of the entire State and the welfare of our citizens and residents; it is imperative that the Arkansas Racing Commission be able to determine eligibility for participation in the Arkansas Racing Commission Purse and Awards Fund and in races that are restricted to registered Arkansas-bred thoroughbred horses; in order to accomplish these goals essential to the welfare of the State and its citizens and residents, the amendments and purposes set forth in this Act must be effective immediately. Therefore, an emergency is hereby declared to exist, and this Act, being immediately necessary for the protection of the public peace, health and safety, shall take effect, and be in full force, immediately upon its passage and approval."

Acts 1989, No. 12, § 8: Feb. 3, 1989. Emergency clause provided: "It is hereby found and declared that horse racing and activities related thereto in Arkansas have had a most significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, which is threatened by increased competition from racing in other states, including new and improved plants and programs in surrounding and nearby states, and it is imperative that Arkansas franchise holders be able to increase purses and improve facilities in order to keep up with competition and hold and improve Arkansas' premiere and traditional position in horse racing, and that in order to accomplish these goals (essential to the welfare of the state and its citizens and residents) the amendments and provisions set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the protection of the public peace, health and safety, shall take effect, and be in full force, immediately upon its passage and approval."

Acts 1999, No. 10, § 7: Feb. 2, 1999. Emergency clause provided: "It is hereby determined by the General Assembly that horse racing and activities related thereto in Arkansas have a significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, and it is imperative that the provisions of this act be effective to the fullest extent possible with respect to the upcoming racing season scheduled to begin January 29, 1999 in order to maintain and improve Arkansas' premier and traditional position in horse racing, and in order to accomplish these goals (essential to the welfare of the state and its citizens and residents) the amendments and provisions set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist, and this act, being immediately necessary for the preservation of the public peace, health and safety, shall take effect, and be in full force, immediately from and after its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1576, § 5: Apr. 15, 1999. Emergency clause provided: "It is hereby determined by the Eighty-second General Assembly that horse racing and activities related thereto in Arkansas have a significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, that competition from outside the State of Arkansas is having an adverse impact on the horse racing industry in Arkansas, that these economic conditions adversely affect the benefit to the State of Arkansas directly and indirectly accruing from horse racing and related activities in Arkansas, that it is imperative that Arkansas franchise holders be able to encourage patronage and tourism in order to keep up with competition and hold and improve Arkansas' premier and traditional position in horse racing, and in order to accomplish these goals (essential to the welfare of the state and its citizens and residents), the amendments and provisions set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist, and this act, being immediately necessary for the preservation of the public peace, health and safety, shall take effect, and be in full force, immediately from and after the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1294, § 3: Emergency clause failed. Emergency clause provided: "It is found and determined by the General Assembly that horse and greyhound racing and activities related thereto in Arkansas have a significant favorable impact on the economy of the entire state and the welfare of our citizens and residents; that competition from outside the State of Arkansas is having an adverse impact on the horse and greyhound racing industry in Arkansas; that other states have allowed horse and greyhound race tracks to conduct account wagering; that the State of Arkansas is presently losing tax revenues when wagers on horse and greyhound racing are placed by Arkansas citizens and residents outside the state or with illegal bookmakers; that these economic conditions adversely affect the benefit to the State of Arkansas directly and indirectly accruing from horse and greyhound racing and related activities in Arkansas; that it is imperative that Arkansas franchise holders be able to increase purses, improve facilities and encourage patronage and tourism in order to keep up with competition and hold and improve Arkansas' premier and traditional position in horse and greyhound racing; and in order to accomplish these goals, essential to the welfare of the state and its citizens and residents, the amendments and provisions set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist, and this act, being immediately necessary for the preservation of the public peace, health and safety, shall take effect, and be in full force, immediately from and after the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall

become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission's authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission's power to assess such fees and penalties is imperative to the Arkansas Racing Commission's ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

23-110-401. Accordance with license required.

(a) Any franchise holder or any person aiding or abetting in the holding or conducting of any horse racing meet at which horse racing shall be permitted for any stake, purse, or reward, except in accordance with a license duly issued as provided in this subchapter, shall be guilty of a Class A misdemeanor for each such offense.

(b) For the purposes of this subchapter, each day of racing in violation of the provisions of this chapter shall be considered as a separate and distinct offense.

History. Acts 1957, No. 46, § 21; A.S.A. 1947, § 84-2747; Acts 2005, No. 1994, § 361.

23-110-402. Number of racing days — Sunday racing — Approval of programs.

(a) The total racing days during any calendar year shall not exceed sixty-eight (68).

(b) A franchise holder shall apply for a license to conduct each racing meet and shall specify in the application for a license the racing days desired, which need not be consecutive.

(c)(1) The franchise holder shall not apply for, and the Arkansas Racing Commission shall not approve, racing on Sundays unless the question of Sunday racing shall have been submitted to the electors of the city or town in which racing is conducted or, if racing is not conducted within the corporate limits of a city or town, to the electors of the county in which racing is conducted, at a special or any regular election and a majority of the electors voting on the question shall have approved Sunday racing at such election.

(2) The governing body of the city, town, or county, as the case may be, shall submit the question to the electors when requested by a franchise holder. The election shall be held and conducted under the general election laws of the state except as otherwise provided in this section.

(3) The ordinance shall set forth the ballot question as follows:

"For Sunday Racing☐
Against Sunday Racing☐
As authorized by § 23-110-402, the question presented is whether or not thoroughbred horse racing can be held on Sundays in _____ (city, town, or county). Vote for or against Sunday racing by marking the appropriate box above."

(4) Notice of the election shall be given by the clerk of the city, town, or county involved by one (1) publication in a newspaper having general circulation within the city, town, or county involved not less than ten (10) days prior to the election. No other publication or posting of a notice by any other public official shall be required.

(5) The election shall be held no earlier than fifteen (15) days after the date of adoption of the ordinance in which the election is called by the legislative body.

(6) The mayor of the city or town or the county judge of the county, as the case may be, shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the city, town, or county involved. The results of the election as stated in the proclamation shall be conclusive unless suit is filed in the circuit court in the county within twenty (20) days after the date of the publication of the proclamation.

(7) If Sunday racing is approved, that approval shall continue in effect from year to year thereafter so long as racing at the location involved is authorized by Arkansas law.

(d) On application of the franchise holder, the commission may change the racing days in any license for a racing meet from those originally set forth in the license.

(e)(1) Prior to each racing meet, the franchise holder shall write and submit to the commission for approval the horse racing and wagering programs to be conducted at each racing meet which shall specify the conditions and provisions applicable to the requested racing and wagering programs, and the commission shall approve or disapprove, in whole or in part, the requested programs.

(2) If any portion of a submission is disapproved, the franchise holder may reapply prior to or at any time during the racing meet involved, but only those horse racing programs and wagering programs that are requested by the franchise holder and approved by the commission may be conducted at a racing meet.

History. Acts 1957, No. 46, § 17; 1961, No. 3, § 1; 1967, No. 130, § 5; 1979, No. 672, § 1; 1983, No. 251, §§ 1, 3; A.S.A. 1947, § 84-2743; Acts 1987, No. 440, § 2; 1989, No. 12, § 1.

Publisher's Notes. Acts 1987, No. 440, § 5, provided: "The purpose of this act is to put the franchise holder in a position to maintain and improve its high level of racing operations in the face of increasing and severe competition by distributing adequate purses and undertaking and completing substantial programs of construction, reconstruction, and maintenance of facilities. It is intended that the franchise holder shall proceed in reliance upon the provisions of this act to incur sufficient debt to undertake a program of construction, reconstruction, and maintenance of facilities in the immediate future and to proceed with it in an orderly manner. The franchise holder shall periodically keep the commission advised of the nature of and progress made concerning its programs of construction, reconstruction, and maintenance of facilities."

Acts 1987, No. 440, § 6, provided: "The provisions of this act shall be effective as of January 1, 1987, and thereafter. To this end, the provisions of this act shall be applicable to the racing meet conducted in calendar year 1987 as though it had been in effect when that meet started except as to:

"(a) the increased amounts to be withheld on races where the wagerer is required to select more than one (1) horse; and

"(b) the amount over six percent (6%), being fifty-five hundredths of one percent (.55%), paid to the commission for the use and benefit of the State of Arkansas under the provisions of § 23-110-408(a) [repealed]. The increased and additional amounts specified in (a) and (b) above can be withheld only on races run after March 26, 1987. Also, all actions taken by the franchise holder, commission, and city, town, or county prior to and subsequent to the enactment of this act which are in accordance with the provisions of this act are hereby authorized, approved, and ratified."

23-110-403. Application for license to conduct meet — Issuance.

(a) Before any franchise holder shall conduct a racing meet in the county in which it holds a franchise, it shall file with the Arkansas Racing Commission an application to hold the meet and shall file the bond required by this chapter.

(b)(1) Each application shall be filed with the commission at least ninety (90) days prior to the date upon which it is desired to begin the racing meet.

(2) The application shall specify the dates on which it is intended or desired to conduct or hold the meet and further information as the commission may prescribe.

(3)(A) With the application there shall be delivered to the commission a certified check or bank draft payable to the order of the commission for the full amount of the license fee for each day of the racing meet.

(B)(i) The license fee required to be paid by the franchise holder under the provisions of this section shall be computed at the rate of five hundred dollars ($500) per day.

(ii) The aggregate amount of the fee shall be based upon the total number of days which it is proposed that racing will be conducted at such a meet.

(C) The license fee imposed pursuant to this subdivision (b)(3) shall be in lieu of all other license or occupation fees or taxes which otherwise would be due by the franchise holder to the State of Arkansas or to any of its political subdivisions.

(c) Whenever mutually agreeable to the commission and the franchise holder, the commission may allot racing dates other than those requested in the application.

(d) Immediately following the allotting of any racing dates and the issuance of a license to hold a racing meet, the commission shall notify the franchise holder of the dates allotted. This notice shall be in writing and sent by registered United States mail to the franchise holder, and each notice and license shall be mailed by the commission at least sixty (60) days before the date fixed for the beginning of the racing meet.

(e)(1) Each license shall specify:

(A) The name of the franchise holder;

(B) The dates on which the racing meet shall be held or conducted;

(C) The location of the place, track, or enclosure at which such racing meet is to be conducted; and

(D) The amount of the license fee paid by the franchise holder.

(2) No license shall be transferable, nor shall it apply to any place, track, or enclosure other than the one specified in the license.

(f)(1) If the commission refuses an application for a license, it shall notify the franchise holder. This notice must be in writing and sent by registered United States mail to the franchise holder and shall be mailed by the commission at least sixty (60) days before the date fixed in the application for the beginning of the racing meet.

(2) In each instance the notice shall contain the reasons for refusal of the application.

(3) No application shall be refused until after the franchise holder has been granted a hearing by the commission.

History. Acts 1957, No. 46, § 18; A.S.A. 1947, § 84-2744; Acts 2001, No. 1553, § 55.

23-110-404. [Repealed.]

Publisher's Notes. This section, concerning license for horse owner, horse trainer, jockey, and jockey agent required, was repealed by Acts 2007, No. 856, § 2. The section was derived from Acts 1957, No. 46, § 20; 1975, No. 352, § 1; A.S.A. 1947, § 84-2746.

23-110-405. Wagering — Penalty for improper wagering.

(a)(1) Any franchise holder conducting a horse racing meet may provide a place or places in the race meeting grounds or enclosure at

which it may conduct and supervise the pari-mutuel or certificate system of wagering.

(2) If conducted under the provisions of this chapter, the pari-mutuel or certificate method of wagering shall not under any circumstances be held or construed to be unlawful, all other laws or parts of laws of the State of Arkansas to the contrary notwithstanding.

(b)(1) With the prior approval of the Arkansas Racing Commission and consistent with applicable federal law, a franchise holder may enter into agreements and arrangements with other parties pursuant to which:

(A) Its patrons may wager on races run at other race tracks that are shown live or in any other manner approved by the commission, by television, or otherwise, at locations on the grounds at the Arkansas race track at any time or times during the calendar year; and

(B) Its races are shown live or in any other manner approved by the commission at other race tracks and locations.

(2) Such agreements and arrangements shall specify all financial, wagering, distribution, and other details that shall govern. To that end, the provisions of §§ 23-110-402 and 23-110-407 and any other inconsistent provisions shall not be applicable to such agreements and arrangements.

(3)(A) For all races simulcast to the grounds of the franchise holder's Arkansas race track from other race tracks and races conducted in the past and rebroadcast by electronic means and shown on a delayed or replayed basis on the grounds of the franchise holder's Arkansas race track under subdivision (b)(1) of this section, the franchise holder shall withhold and pay to the commission as a privilege tax for the use and benefit of the State of Arkansas one percent (1%) of all moneys wagered on the races on the grounds of the franchise holder's Arkansas race track.

(B) The difference between the two percent (2%) rate being withheld and so paid by the franchise holder to the State of Arkansas on wagers on the races described in subdivision (b)(3)(A) of this section under rules and regulations of the commission in effect prior to the enactment of this subdivision (b)(3) and the one percent (1%) rate established in subdivision (b)(3)(A) of this section shall be withheld by the franchise holder from wagers on such races and set aside by the franchise holder in a separate account to be used only for purses and construction, for debt service on money borrowed by the franchise holder for construction, or for promotions to encourage patronage and tourism, in accordance with the provisions of § 23-110-407(a)(3).

(c) No franchise holder shall permit any person under eighteen (18) years of age to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(d)(1)(A) However, nothing contained in this section shall be construed to permit the pari-mutuel or certificate method of wagering

upon any race track unless the track is licensed as provided by this chapter.

(B) It is declared to be unlawful for any franchise holder to permit, conduct, or supervise upon any race track any pari-mutuel or certificate method of wagering except in accordance with the provisions of this chapter.

(2)(A) There shall be no wagering on the results of any races except under the pari-mutuel or certificate method of wagering as provided for in this section, and then only by the installation and use of equipment approved by the commission.

(B) Any franchise holder using or permitting wagering or any person wagering under any other method at a licensed race track shall be guilty of a Class D felony.

(e)(1) With the prior approval of the commission and pursuant to rules adopted by the commission, a franchise holder's patrons with money on deposit in an account with the franchise holder may place wagers by communication through telephone or other mobile device or through other electronic means on races conducted at the franchise holder's race track facility and horse races or greyhound races at other racetracks, whether or not the patron is located on the grounds of the franchise holder's race track facility when placing the wager.

(2) Wagers accepted by the franchise holder under this subsection shall be treated for all purposes under this chapter as a wager made by the patron on the grounds of the franchise holder's race track facility.

History. Acts 1957, No. 46, § 22; A.S.A. 1947, § 84-2748; Acts 1987, No. 440, § 3; 1989, No. 12, § 2; 1999, No. 10, § 1; 2001, No. 1294, § 2; 2005, No. 1994, § 485; 2013, No. 350, § 5.

Publisher's Notes. As to purpose and applicability of Acts 1987, No. 440, see Publisher's Notes, § 23-110-402.

Amendments. The 2013 amendment added (e).

Cross References. Wagering on dog races, § 23-111-508.

CASE NOTES

Analysis

Constitutionality.
Illegal Transactions.

Constitutionality.

Former similar act legalizing pari-mutuel betting on horse races was not unconstitutional on the ground of being a lottery as element of chance, though present, was not controlling; the condition, speed, and endurance of the horses aided by the skill and management of the rider or driver was the determining factor of the result of the race. Longstreth v. Cook, 215 Ark. 72, 220 S.W.2d 433 (1949) (decision under prior law).

Illegal Transactions.

A telegraph company was not liable for negligence in failure to transmit telegram which related to tip on race outside the state, the illegality of the transaction not being removed by former similar section. Western Union Tel. Co. v. Estes, 213 Ark. 719, 212 S.W.2d 333 (1948) (decision under prior law).

Cited: Register v. Oaklawn Jockey Club, Inc., 306 Ark. 318, 811 S.W.2d 315 (1991); In re Armstrong, 217 B.R. 569 (Bankr. E.D. Ark. 1998).

23-110-406. Disposition of wagering money — Payment to winning bettors required — Exceptions.

(a) Excepting only the moneys retained for the use and benefit of the franchise holder, the amounts paid to the Arkansas Racing Commission for the use and benefit of the State of Arkansas, the amount paid to the commission for deposit into the Arkansas Racing Commission Purse and Awards Fund, and the amount paid to a city, town, or county as provided in this subchapter, all moneys received by the franchise holder from wagers pursuant to this subchapter shall be paid over to bettors holding winning pari-mutuel tickets in accordance with the provisions and at the times specified in the various race programs written by the franchise holder for the racing meet, as their respective interests may appear, upon presentation of those tickets.

(b) However, all winning pari-mutuel tickets not presented to the franchise holder for redemption on or before the one hundred eightieth day next following the last racing day of each racing meet hereafter held shall be void. Of the moneys represented by void pari-mutuel tickets, the franchise holder shall forthwith distribute the proceeds as follows:

(1) One-third (⅓) of the amount thereof shall be retained by the franchise holder for its own use and benefit;

(2) One-third (⅓) of the amount thereof shall be paid to the commission for deposit in the State Treasury as general revenues; and

(3) One-third (⅓) of the amount thereof shall be paid to the treasurer of the county in which the racing track is located for credit to the general fund of the county.

History. Acts 1957, No. 46, § 23; 1965, No. 142, § 1; 1967, No. 130, § 3; 1973, No. 780, § 1; 1983, No. 251, §§ 2, 3; 1985 (1st Ex. Sess.), No. 27, §§ 2, 3; 1985 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 84-2749.

Publisher's Notes. Acts 1973, No. 780, § 4, provided that it was the purpose and intent of the act to classify the revenues received by the state from the pari-mutuel tax on horse and dog racing and those represented by void pari-mutuel tickets on horse and dog racing as general revenues.

CASE NOTES

Analysis

Constitutionality.
In General.
Applicability.
Duty of Ordinary Care.

Constitutionality.

This section does not violate the Arkansas Constitution's prohibitions of the impairment of contractual obligations, government taking of property without notice or hearing, or of the enactment of special legislation. Mahurin v. Oaklawn Jockey Club, 299 Ark. 13, 771 S.W.2d 19 (1989).

In General.

The preclusion of recovery under this section is, or is the same as, a statute of limitation, and its effect is not adjudicatory but legislative. Mahurin v. Oaklawn Jockey Club, 299 Ark. 13, 771 S.W.2d 19 (1989).

Applicability.

The applicability of this section does not require a ticket holder's notification of the escheat and limitation provisions of this section. Mahurin v. Oaklawn Jockey Club, 299 Ark. 13, 771 S.W.2d 19 (1989).

Duty of Ordinary Care.

Racetrack owed a duty to exercise ordinary care to patron who placed what turned out to be a winning bet but machine failed to issue a conforming ticket. Register v. Oaklawn Jockey Club, Inc., 306 Ark. 318, 811 S.W.2d 315 (1991), modified, 306 Ark. 321, 821 S.W.2d 475 (1991).

Cited: Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980).

23-110-407. Disposition of wagering money — Portion for franchise holder.

(a)(1) At the racing meet held in calendar year 1989 and at the racing meet held in each calendar year thereafter, the franchise holder shall withhold not more than seventeen percent (17%) and not less than five and one-half percent (5.5%) of all moneys wagered on races in which the wagerer is required to select one (1) horse and not more than twenty-one percent (21%) and not less than five and one-half percent (5.5%) of all moneys wagered on races in which the wagerer is required to select more than one (1) horse. Within those limits, the exact amounts to be withheld shall be specified in the wagering program requested by the franchise holder and approved by the Arkansas Racing Commission as specified in § 23-110-402.

(2) From the amounts withheld pursuant to the provisions of subdivision (a)(1) of this section, the franchise holder shall pay the following:

(A)(i) At all racing meets conducted in calendar years 1989 — 2001, an amount equal to two and one-half percent (2.5%) of all moneys wagered on all races shall be paid to the commission as a privilege tax for the use and benefit of the State of Arkansas.

(ii) At all racing meets conducted in calendar year 2002 and in each calendar year thereafter, an amount equal to one percent (1%) of all moneys wagered on all races shall be paid to the commission as a privilege tax for the use and benefit of the State of Arkansas; and

(B)(i) In the case of all racing meets for thoroughbred horses, an amount equal to one-half of one percent (0.5%) of all moneys wagered shall be paid to the commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards, and stallion awards as hereinafter specified.

(ii) The number of Arkansas-bred races shall be a matter for negotiation between the franchise holder and the Arkansas Thoroughbred Breeders and Horsemen's Association.

(3) The remainder of the amounts withheld pursuant to the provisions of subdivision (a)(1) of this section shall be retained by the franchise holder for use as follows:

(A)(i) For all racing meets:

(a) In calendar years 1989 — 2001, three percent (3%) of all moneys wagered on races in which the wagerer is required to select one (1) horse, and two percent (2%) of all moneys wagered on races where the wagerer is required to select more than one (1) horse, i.e., the purse, construction, and patronage and tourism promotion moneys; and

(b) In calendar year 2002 and in each calendar year thereafter, four and one-half percent (4.5%) of all moneys wagered on races in which the wagerer is required to select one (1) horse, and three and one-half percent (3.5%) of all moneys wagered on races in which the wagerer is required to select more than one (1) horse, i.e., the purse, construction, and patronage and tourism promotion moneys, shall be set aside by the franchise holder in a separate account to be used only for purses and construction, for debt service on money borrowed by the franchise holder for construction, or for promotions to encourage patronage and tourism.

(ii)*(a)* As used in this section, the term "construction":

(1) Shall include all items and expenditures incurred in keeping the overall racing facility in the best possible condition for the patrons, horsemen, and franchise holder, including, without limitation, land acquisition, provided that the franchise holder submits plans for utilizing the acquired land for an approved purpose within five (5) years of the acquisition, new construction with related equipment, and reconstruction, renovation, reconditioning, and repairing of facilities with related equipment;

(2) Shall not include ordinary or routine maintenance of the overall racing facility and shall not include the construction or improvement of areas of the racing facility not generally accessible by, or used for the benefit of, either the horsemen or patrons, or both; and

(3) Shall not apply to office furniture, office telephones, or other office equipment primarily devoted to the use of the franchise holder and providing little or no benefit to either horsemen or patrons, or both.

(b) The franchise holder may be reimbursed only for construction and patronage and tourism promotion expenditures from the purse, construction, and patronage and tourism promotion fund after submitting a claim that itemizes each expenditure listing the specific expenditure and the payee of the expenditure and stating in specific terms with respect to construction expenditures how the expenditure jointly benefits the patrons, horsemen, and franchise holder.

(iii)*(a)* The commission shall have jurisdiction and shall seek the assistance of the Department of Finance and Administration to check and verify compliance by the franchise holder with the provisions of this subdivision (a)(3). The commission shall make periodic determinations as to compliance under such rules and regulations as the commission shall adopt.

(b) The franchise holder must deliver to the department any documents reasonably requested to check and verify compliance with this subdivision (a)(3), within thirty (30) days of receiving a written request for the documents. If the department does not receive the requested documents within the time period provided, the Director of the Department of Finance and Administration shall notify the commission, and no reimbursement shall be approved from the fund until the documents are delivered.

(c) In the case of construction and patronage and tourism promotion, the commission may use a multiyear approach based on a multiyear program being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multiyear period out of the purse, construction, and patronage and tourism promotion moneys derived during the multiyear period, provided that the multiyear period shall not exceed five (5) years, unless the commission makes a specific determination that a longer period is necessary to finance long-term construction projects for the joint benefit of patrons, horsemen, and the franchise holder.

(d) The franchise holder may seek prior approval from the commission for expenditures. The application for the approval must contain the information required by subdivision (a)(3)(A)(ii)*(b)* of this section. The initial approval will be subject to a final approval by the commission that the expenditures were made for the approved purposes in compliance with the requirements of this subdivision (a)(3), and the commission shall seek assistance from the department to verify that the expenditures were made for the approved purposes.

(e) If there is a final determination that any of the purse, construction, and patronage and tourism promotion moneys have not been used for the purposes specified in this subdivision (a)(3), the franchise holder shall pay the amount equal to any moneys used for an unauthorized purpose to the commission for the use and benefit of the State of Arkansas.

(iv)*(a)* The purse, construction, and patronage and tourism promotion moneys shall not be subject to the provisions of any contract or agreement between the franchise holder and any organization representing horsemen. To that end, any contractual obligations for the use of moneys for purses shall not apply to any expenditures for construction or patronage and tourism promotion out of the purse, construction, and patronage and tourism promotion moneys.

(b) Any expenditures for purses out of the purse, construction, and patronage and tourism promotion moneys shall be in addition to contractual purse obligations affecting moneys other than the purse, construction, and patronage and tourism promotion moneys.

(c) The franchise holder shall determine the amount of the purse, construction, and patronage and tourism promotion moneys to be used for the authorized purposes, except that at least one-half (½) of the purse, construction, and patronage and tourism promotion moneys must be used for purses;

(v) If the amount of approved expenditures exceeds the balance of the purse, construction, and patronage and tourism promotion fund, the excess amount will remain payable to the franchise holder out of the purse, construction, and patronage and tourism promotion fund. However, with respect to expenditures incurred by the franchise holder on or after January 1, 2001, interest shall not accrue on the deficit balance, unless the interest is payable to an unrelated third-party lender with respect to indebtedness directly incurred to finance construction expenditures as contemplated by this subdivision (a)(3);

(B) The remainder of the amounts withheld pursuant to the provisions of subdivision (a)(1) of this section shall be retained by the franchise holder for its own use and benefit; and

(C) One percent (1%) of the moneys set aside by the franchise holder for purses from the moneys retained by it pursuant to the provisions of subdivision (a)(3) of this section, including that portion of the purse, construction, and patronage and tourism promotion moneys actually used for purses, shall be paid from the moneys set aside for purses to the Arkansas Horsemen's Benevolent and Protective Association to be used for its benevolent purposes. The payment shall be made by the franchise holder at the conclusion of each racing meet.

(b) All payments to the commission under subdivision (a)(2)(B) of this section and all payments to a city or town and a county shall be made by the franchise holder at the conclusion of the racing meet involved. Such payments to a city or town and a county shall be used by the city, town, or county for such lawful purposes as the city, town, or county shall determine. All payments due the State of Arkansas under subdivision (a)(2)(A) of this section shall be paid to the commission daily.

History. Acts 1957, No. 46, § 23; 1965, No. 142, § 1; 1967, No. 130, § 3; 1983, No. 251, §§ 2, 3; A.S.A. 1947, § 84-2749; Acts 1987, No. 440, § 4; 1989, No. 12, § 3; 1999, No. 1576, § 1; 2001, No. 1294, § 1.

Publisher's Notes. As to purpose and applicability of Acts 1987, No. 440, see Publisher's Notes, § 23-110-402.

CASE NOTES

Cited: Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980).

23-110-408. [Repealed.]

Publisher's Notes. This section, concerning disposition of wagering money and payments to the Arkansas racing commission, was repealed by Acts 1989, No. 12, § 5. The section was derived from Acts 1957, No. 46, § 23; 1965, No. 142, § 1; 1967, No. 130, § 3; 1983, No. 251, §§ 2, 3; A.S.A. 1947, § 84-2749; Acts 1987, No. 440, § 4.

23-110-409. Disposition of wagering money — Arkansas Racing Commission Purse and Awards Fund.

(a) The Arkansas Racing Commission Purse and Awards Fund shall be deposited by the Arkansas Racing Commission in such banks as the commission shall determine.

(b)(1) In order to promote and encourage the development of thoroughbred horse breeding in Arkansas with its attendant economic benefits to the state and its citizens, moneys in the Arkansas Racing Commission Purse and Awards Fund are classified as special revenues

and shall be disbursed by the commission for purse supplements and breeders' awards in accordance with a written program prepared and presented to it by the Arkansas Thoroughbred Breeders and Horsemen's Association.

(2) Breeders' awards may include awards to owners of registered Arkansas-bred thoroughbred horses, owners of registered Arkansas thoroughbred broodmares, and owners of registered Arkansas thoroughbred stallions.

(3) Registered Arkansas-bred thoroughbred horses, registered Arkansas thoroughbred broodmare, registered Arkansas thoroughbred stallion, foal registration, broodmare registration and stallion registration, eligibility to participate in the Arkansas Racing Commission Purse and Awards Fund, and eligibility to participate in races that are restricted to registered Arkansas-bred thoroughbred horses shall be determined and made in accordance with registration rules and regulations, including reasonable time deadlines and fee schedules, adopted by the Arkansas Thoroughbred Breeders and Horsemen's Association and approved by the commission.

(c) The franchise holder shall be solely responsible for writing the various races for each racing meet.

History. Acts 1957, No. 46, § 23; 1967, No. 130, § 3; 1983, No. 251, §§ 2, 3; A.S.A. 1947, § 84-2749; Acts 1988 (3rd Ex. Sess.), No. 14, § 1; 1989, No. 12, § 4.

CASE NOTES

Cited: Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980).

23-110-410. Disposition of wagering money — Breaks.

(a)(1) Breaks shall be computed on the basis of ten cents (10¢) on the dollar, and the odd cents or breaks are classified as special thoroughbred horse racing fees to be deposited and used as provided in this section.

(2) Provided, in the event of a minus pool, the Arkansas Racing Commission shall have the authority to establish the minimum payout on winning wagers.

(b) During the first racing meet in any calendar year, the franchise holder shall withhold and pay the breaks to the following recipients for the purposes specified in this subsection:

(1) Forty-eight and twenty-five hundredths percent (48.25%) of the breaks shall be paid to the city or town in which the racing meet is conducted, or, if the racing meet is not conducted within the corporate limits of a city or town, then forty-eight and twenty-five hundredths percent (48.25%) of the breaks shall be paid to the county in which the racing meet is conducted;

(2) Eleven and seventy-five hundredths percent (11.75%) of the breaks shall be paid to the county in which the racing meet is

conducted, whether or not the racing meet is conducted within the corporate limits of a city or town in the county; and

(3) The remaining forty percent (40%) of the breaks shall be withheld and retained by the franchise holder for its own use and benefit.

(c) During the second and any subsequent racing meet in any calendar year, the franchise holder shall withhold and pay the breaks to the following recipients for the purposes specified in this subsection:

(1) Twenty-four and one hundred twenty-five thousandths percent (24.125%) of the breaks shall be paid to the city or town in which any racing meet is conducted, or, if the racing meet is not conducted within the corporate limits of a city or town, then twenty-four and one hundred twenty-five thousandths percent (24.125%) of the breaks shall be paid to the county in which the racing meet is conducted;

(2) Five and eight hundred seventy-five thousandths percent (5.875%) of the breaks shall be paid to the county in which the racing meet is conducted, whether or not the racing meet is conducted within the corporate limits of a city or town in the county;

(3) Thirty percent (30%) of the breaks shall be paid to the State of Arkansas; and

(4) The remaining forty percent (40%) of the breaks shall be withheld and retained by the franchise holder for its own use and benefit.

History. Acts 1957, No. 46, § 23; 1967, No. 130, § 3; 1979, No. 733, § 1; 1983, No. 251, §§ 2, 3; A.S.A. 1947, § 84-2749; Acts 1987, No. 440, § 4; 1999, No. 10, § 2.

Publisher's Notes. As to purpose and applicability of Acts 1987, No. 440, see Publisher's Notes, § 23-110-402.

CASE NOTES

Cited: Evans v. Arkansas Racing Comm'n, 270 Ark. 788, 606 S.W.2d 578 (1980).

23-110-411. Admission tax.

(a) Each franchise holder authorized to conduct a race meet under this chapter shall pay to the Arkansas Racing Commission for the use and benefit of the State of Arkansas either ten percent (10%) of all moneys received each day from admissions paid by persons attending the races at the meeting or the sum of ten cents (10¢) on each and every paid admission, whichever sum is the greater. All payments provided in this section shall be made each day of any and every race meeting.

(b)(1) The issuance of all tax-free passes shall be by the franchise holder or its employees or agents. The commission shall have no authority over the issuance or distribution of such passes.

(2) It shall be unlawful for any person, corporation, firm, partnership, or any other entity to sell or offer for sale, for any consideration, any tax-free pass issued by the commission for general admission to the racing facility of any franchise holder.

(3) Any person, corporation, firm, partnership, or other entity that sells or offers for sale tax-free passes shall be guilty of a Class B misdemeanor upon conviction for each such offense.

History. Acts 1957, No. 46, § 24; A.S.A. 1947, § 84-2750; Acts 1991, No. 664, § 1; 1991, No. 1020, § 1; 1999, No. 1508, §§ 7, 10; 2005, No. 1994, § 239.

23-110-412. Record keeping by franchise holder — Audit.

(a) Every franchise holder conducting race meets under this chapter shall keep its books and records so as to clearly show the true number of admissions, the total amount of money contributed to each pari-mutuel pool on each race separately, and the amount of money received daily from admission fees.

(b) Within thirty (30) days after the conclusion of every race meeting, the franchise holder shall submit to the Arkansas Racing Commission a complete audit of receipts and admissions.

(c) Each franchise holder conducting a racing meet under the provisions of this chapter shall keep its books and records in such manner as to clearly show the total amount of moneys wagered on each race held or conducted at each meet and the disposition of those moneys.

History. Acts 1957, No. 46, §§ 23, 25; A.S.A. 1947, §§ 84-2749, 84-2751; Acts 1987, No. 440, § 4.

Publisher's Notes. As to purpose and applicability of Acts 1987, No. 440, see Publisher's Notes, § 23-110-402.

23-110-413. Access to meets, books, records, etc.

(a) The Arkansas Racing Commission shall at all times have access to any portion of the space or enclosure where a race meet is held, including the space or enclosure where the pari-mutuel or certificate system of wagering is conducted or supervised at any racing meet, for the purpose of ascertaining whether or not the franchise holder is retaining only the commission provided in this chapter.

(b) The commission shall have full and free access to the books, records, machines, and papers pertaining to pari-mutuel or certificate method of wagering, and admission tickets.

(c) The commission may also at any time investigate and ascertain whether or not any of the provisions of this chapter or the rules and regulations of the commission are being violated at the race track or enclosure.

History. Acts 1957, No. 46, § 27; A.S.A. 1947, § 84-2753.

23-110-414. Franchise holder required to give bond.

Every franchise holder to which a license may be granted under this chapter at its own cost and expense shall, before the license is delivered, give a bond in the penal sum of fifty thousand dollars ($50,000), payable to the Arkansas Racing Commission, with a surety to be approved by

the commission, conditioned to faithfully make the payments to the commission provided for in this chapter and to keep its books and records and make reports herein provided and to conduct its race meets in conformity with the provisions of this chapter.

History. Acts 1957, No. 46, § 26; A.S.A. 1947, § 84-2752.

23-110-415. Failure to pay tax.

(a) Any franchise holder failing or refusing to pay the amount found to be due the Arkansas Racing Commission from any tax provided for or imposed by this chapter shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000), in addition to the amount due from the franchise holder as provided in this chapter.

(b) All fines paid into any court of this state by a franchise holder found guilty of violating this section shall be paid over by the clerk of the court to the commission within ten (10) days after it has been paid to the clerk by the franchise holder.

History. Acts 1957, No. 46, § 26; A.S.A. 1947, § 84-2752; Acts 2005, No. 1994, § 156.

CHAPTER 111

ARKANSAS GREYHOUND RACING LAW

SUBCHAPTER.

1. General Provisions.
2. Arkansas Racing Commission.
3. Franchises Generally.
4. Officers, Directors, Stockholders, Etc., of Franchises.
5. Conduct of Meets.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-4 and §§ 23-111-501 — 23-111-514 may not apply to §§ 23-111-515 — 23-111-517 which were enacted subsequently.

RESEARCH REFERENCES

ALR. Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race. 36 A.L.R.4th 1169.

Am. Jur. 38 Am. Jur. 2d, Gambling, §§ 56-58.

C.J.S. 38 C.J.S., Gaming, § 8.

CASE NOTES

Constitutionality.

Former similar act did not violate Ark. Const., Art. 19, § 14 prohibiting lotteries, since betting upon greyhound races afforded opportunity for exercise of judgment and was not completely controlled

by chance as is a lottery. Scott v. Dunaway, 228 Ark. 943, 311 S.W.2d 305 (1958) (decision under prior law).

Cited: Glover v. Hot Springs Kennel Club, Inc., 230 Ark. 544, 323 S.W.2d 902 (1959); Parker v. Priest, 326 Ark. 123, 930 S.W.2d 322 (1996); In re Armstrong, 217 B.R. 569 (Bankr. E.D. Ark. 1998).

Subchapter 1 — General Provisions

SECTION.
23-111-101. Title.
23-111-102. Applicability.
23-111-103. Inconsistent statutes inapplicable.
23-111-104. Disposition of funds.
23-111-105. Racing passes.

Effective Dates. Acts 1957, No. 191, § 30: July 1, 1957.

Acts 1991, No. 1117, § 12: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of the Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 341, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 7, § 12: July 1, 1995. Emergency Clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 73, § 12: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided,

and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 2001, No. 408, § 2: became law without Governor's signature Feb. 23, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that the distribution of dog racing passes by members of the General Assembly and constitutional officers results in a statewide distribution of those passes and because of the racial diversity of the membership of the General Assembly, it also further assures that the passes will be distributed in a racially diverse manner; that the General Assembly has great interest in promoting and nourishing tourism within the state and its distribution of passes to out-of-state persons will further the objective of the state to encourage tourism and profit thereby; that this act makes clear that members of the General Assembly and constitutional officers are merely conduits to accomplish the stated purposes of issuance of racing passes and that the passes do not constitute gifts or compensation to the membership of the General Assembly or constitutional officers; and unless this emergency clause is adopted, this act may not go into effect until after the current racing season. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-111-101. Title.

This chapter shall be referred to and may be cited as the "Arkansas Greyhound Racing Law".

History. Acts 1957, No. 191, § 1; A.S.A. 1947, § 84-2816.

23-111-102. Applicability.

Nothing contained in this chapter shall in any way be construed to apply to any other method or manner of racing except the racing of greyhounds as provided in this chapter.

History. Acts 1957, No. 191, § 25; A.S.A. 1947, § 84-2840.

23-111-103. Inconsistent statutes inapplicable.

All other acts and parts of acts inconsistent with any of the provisions of this chapter are expressly declared not to apply to any person, partnership, group, association, trust, or corporation engaged or participating in racing or making or contributing to the pari-mutuel or certificate method of wagering in manner and form as provided for by this chapter at any race meeting held or conducted by any franchise

holder having a license for the holding or conducting of the race meetings as provided by this chapter.

History. Acts 1957, No. 191, § 26; A.S.A. 1947, § 84-2841.

23-111-104. Disposition of funds.

(a) All franchise or license fees, excise or privilege taxes, penalties, fines, costs, and other amounts received by the Arkansas Racing Commission under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer the money to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by, and to be used for the respective purposes set forth in, the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1957, No. 191, § 27; A.S.A. 1947, § 84-2842.

CASE NOTES

Cited: Arkansas Racing Comm'n v. Hot Springs Kennel Club, Inc., 232 Ark. 504, 339 S.W.2d 126 (1960).

23-111-105. Racing passes.

(a) The Director of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually, and it shall not be fewer than the number printed in 1990.

(b)(1) Racing passes provided to and accepted by members of the General Assembly and constitutional officers are to be distributed by them to their constituents in order to provide for a statewide distribution of the racing passes and to persons residing outside the State of Arkansas in order to promote tourism and advance the economic interests of the state.

(2) The passes provided to the members of the General Assembly and constitutional officers are not for their personal use but are for redistribution as provided in this section and, therefore, do not constitute gifts or compensation to members of the General Assembly and constitutional officers for the purposes of any law of this state.

(3) This section does not prohibit members of the General Assembly and constitutional officers from redistributing racing passes to other members of the General Assembly or other state constitutional officers.

History. Acts 1991, No. 1117, § 5; 1993, No. 341, § 5; 1995, No. 7, § 6; 1997, No. 73, § 6; 2001, No. 408, § 1.

A.C.R.C. Notes. Acts 2014, No. 266, § 6, provided: "RACING PASS RESTRICTIONS. The Director of the Department of

Finance and Administration shall set a maximum number of racing passes to be printed and issued annually and it shall not be less than the number printed in 1990.

"The provisions of this section shall be in effect only from July 1, 2014 through June 30, 2015."

Publisher's Notes. Acts 1991, No. 1117, § 5, as amended, is also codified as § 23-110-105.

Subchapter 2 — Arkansas Racing Commission

SECTION.
23-111-201. Jurisdiction of Arkansas Racing Commission.
23-111-202. Membership.
23-111-203. Powers and duties generally.
23-111-204. Regulatory authority — Limitations.
23-111-205. Hearings.

Effective Dates. Acts 1957, No. 191, § 30: July 1, 1957.

Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission's authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission's power to assess such fees and penalties is imperative to the Arkansas Racing Commission's ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-111-201. Jurisdiction of Arkansas Racing Commission.

(a) All references to "commission" in this chapter mean the Arkansas Racing Commission or its successor having jurisdiction over thoroughbred horse racing in this state.

(b) In addition to all other duties, powers, and responsibilities conferred upon it by other laws of this state, the commission shall exercise duties, powers, and responsibilities over greyhound racing as authorized in this chapter.

History. Acts 1957, No. 191, § 2; A.S.A. 1947, § 84-2817.

Cross References. Arkansas Racing Commission, § 23-110-201 et seq.

23-111-202. Membership.

No person who is officially connected with, employed by, financially interested in, or related within the third degree of consanguinity or affinity to any officer or stockholder of an applicant for, or any officer or stockholder of a holder of, a franchise applied for or issued under or pursuant to the provisions of this chapter shall be eligible to serve as a member of the Arkansas Racing Commission having authority to administer this chapter.

History. Acts 1957, No. 191, § 3; A.S.A. 1947, § 84-2818.

23-111-203. Powers and duties generally.

(a) Subject to the limitations and conditions as in this chapter or other applicable law provided, the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of greyhound racing in the state where the racing is permitted for any stake, purse, or reward.

(b) In exercising the jurisdiction as provided in subsection (a) of this section, but without necessarily being limited to the following, it shall be the function, power, and duty of the commission to:

(1) Grant franchises to conduct greyhound races;

(2) Approve dates for each racing meet and issue permits therefor;

(3) Issue licenses to:

(A) An attendant;

(B) A franchise holder's employee;

(C) A greyhound handler;

(D) A kennel employee;

(E) A kennel helper;

(F) A greyhound owner;

(G) A greyhound trainer;

(H) An assistant greyhound trainer;

(I) A veterinarian;

(J) A veterinarian assistant; and

(K) An authorized agent, contractor, vendor, or other person employed or involved with the care of greyhounds or greyhound racing on the grounds of the licensed racetrack;

(4) Establish by rule the license fees, not to exceed one hundred fifty dollars ($150) per applicant, for a license issued under subdivision (b)(3) of this section;

(5) Collect and deposit into the State Treasury all fees for franchises and licenses, all taxes and other imposts, and all other moneys due the State of Arkansas in relation to greyhound racing;

(6) Hear and determine all matters properly coming before the commission and grant rehearings thereon; and

(7)(A) Take other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate and to effectively control in the public interest greyhound racing in the State of Arkansas, including without limitation:

(i) Imposing fines in an amount not to exceed one hundred thousand dollars ($100,000) per violation of a rule of the commission;

(ii) Issuing orders;

(iii) Ordering the forfeiture of purse money won by a disqualified greyhound;

(iv) Prescribing conditions under which greyhound racing shall be conducted by a franchise holder;

(v) Promulgating rules;

(vi) Redistributing forfeited purse money; and

(vii) Suspending or revoking licenses.

(B) The commission shall exercise its authority under this subsection in a reasonable manner.

(C) The holder of a franchise or a taxpayer may appeal an action of the commission to the Pulaski County Circuit Court.

(c)(1)(A) An applicant shall be fingerprinted to determine an applicant's suitability to be issued a license as a greyhound owner or trainer.

(B) The fingerprints shall be forwarded by the commission to the Department of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background checks, the fingerprints shall be forwarded by the department to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Department to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background checks and the national criminal history record check to the commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national

criminal history record check shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (c)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background checks or national criminal history record check shall be required of applicants for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

History. Acts 1957, No. 191, § 4; A.S.A. 1947, § 84-2819; Acts 2007, No. 856, § 3; 2013, No. 350, §§ 3, 4.

Amendments. The 2013 amendment rewrote (b)(3), (b)(4), and (b)(7).

CASE NOTES

In General.

This section defines the power and duty of the commission. Arkansas Racing Comm'n v. Hot Springs Kennel Club, Inc., 232 Ark. 504, 339 S.W.2d 126 (1960).

23-111-204. Regulatory authority — Limitations.

(a) The Arkansas Racing Commission shall have full, complete, and sole power and authority to promulgate rules, regulations, and orders and prescribe conditions under which greyhound racing shall be conducted by a franchise holder, but the power and authority so granted shall be exercised by the commission in a reasonable manner. The holder of any franchise, or any taxpayer, shall have redress to the Pulaski County Circuit Court for any wrong committed by the commission in the exercise of the power and authority granted pursuant to this section.

(b)(1) The commission shall have no right or power to determine who shall be officers or employees of any franchise holder.

(2) However, the commission may by rule require that all officers and employees, or agents, of the franchise holder who are in charge of, or whose duties relate directly to, the running of races, and the handling of any funds which may be wagered on any race, be approved by the commission.

(3) The commission may compel the discharge of any official, employee, or agent of the franchise holder who fails or refuses to comply with the rules, regulations, or orders of the commission or who, in the opinion of the commission, is guilty of fraud or dishonesty.

History. Acts 1957, No. 191, § 12; A.S.A. 1947, § 84-2827.

CASE NOTES

Cited: Arkansas Racing Comm'n v. Emprise Corp., 254 Ark. 975, 497 S.W.2d 34 (1973); Woodend v. Southland Racing Corp., 337 Ark. 380, 989 S.W.2d 505 (1999).

23-111-205. Hearings.

(a)(1) In the event any franchise holder or person is aggrieved by any action of the Arkansas Racing Commission, he or she shall be entitled to a hearing by the commission.

(2)(A) The hearing shall be held at such place in the State of Arkansas and at such time as the commission may designate.

(B) Notice shall be served on the party affected by mailing the notice of the time and place that the hearing will be held by registered or certified United States mail to the party affected.

(3) In conducting the hearing, the commission shall not be bound by technical rules of evidence.

(4) Any party affected in the hearing may be represented by counsel and shall have the right to introduce evidence, and the commission may in its discretion likewise be represented by counsel at the hearing. The counsel shall participate in the conduct of the hearing for and on behalf of the commission.

(b)(1) For purposes of conducting a hearing, the commission shall have the power to administer oaths, issue subpoenas, and compel the attendance and testimony of witnesses.

(2) Any person who has been served with a subpoena to appear and testify issued by the commission in the course of an inquiry or hearing conducted under the provisions of this chapter and who shall refuse and neglect to appear or testify relative to the hearing as commanded in the subpoena shall be guilty of a violation and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

(3) In connection with any hearing, the commission or the aggrieved may cause the deposition of witnesses within or without the state to be taken in the manner prescribed by existing statutes for the taking of depositions in this state.

(c) All hearings shall be held before at least three (3) members of the commission, and the concurrence of at least three (3) members of the commission shall be necessary for any finding or order.

(d) At the conclusion of the hearing, the commission shall make its findings to be the basis for the action taken by the commission. The findings and order shall be subject to review in Pulaski County Circuit Court, from which an appeal may be taken to the Supreme Court.

History. Acts 1957, No. 191, § 15; 1965, No. 176, § 4; A.S.A. 1947, § 84-2830; Acts 2005, No. 1994, § 157.

Subchapter 3 — Franchises Generally

SECTION.
23-111-301. Greyhound racing permitted — Limitations.
23-111-302. Application generally — Issuance of temporary franchise — Hearing and appeal.
23-111-303. Approval of electors required.
23-111-304. Elections.
23-111-305. Construction of racing plant — Issuance of permanent franchise.
23-111-306. Subsequent referendum elections.
23-111-307. Franchises granted prior to July 1, 1957.
23-111-308. Employees and patrons.

Effective Dates. Acts 1957, No. 191, § 30: July 1, 1957.

Acts 1965 (2nd Ex. Sess.), No. 7, § 6: Nov. 6, 1965. Emergency clause provided: "The General Assembly has determined that: (1) the approval of pari-mutuel wagering on greyhound racing in any county in this State is a matter of vital concern to the people of the entire State, (2) improvements already completed and now being made in means and methods of communication and transportation (particularly in the State and Interstate Highway Systems) render it impossible to confine the economic impact of such wagering to a single county, and (3) an election has been called to submit the question of pari-mutuel wagering on greyhound racing in Garland County to the electors of that county on November 23, 1965. Therefore, the General Assembly finds and declares that because of the vital concern of the people of the entire State in the matter of pari-mutuel wagering on greyhound racing an emergency exists and that this act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after its passage and approval."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-111-301. Greyhound racing permitted — Limitations.

(a)(1) Greyhound racing may be conducted in all political subdivisions of the State of Arkansas, but only by the holder of a franchise granted by the Arkansas Racing Commission, and the commission may grant a franchise only to a corporation organized under the laws of this state.

(2) Franchises may not be granted by the commission to individuals, partnerships, associations, trusts, or to any others except corporations as provided in this section.

(b)(1) However, in the event that the limitations contained in subsection (a) of this section are declared unconstitutional, then the

commission may grant franchises to individuals, partnerships, associations, trusts, and corporations.

(2) Wherever the word "corporation" shall appear in this chapter, it shall be deemed to include the enumeration in subdivision (b)(1) of this section in the event of the declaration of unconstitutionality.

(c) The commission may not grant more than one (1) franchise for conducting greyhound racing meets in a single county.

(d) No franchise or temporary franchise shall be granted whenever the cost of the plant proposed to be constructed, including lands, buildings, facilities, and equipment, shall be less than one million dollars ($1,000,000).

History. Acts 1957, No. 191, §§ 5, 7; A.S.A. 1947, §§ 84-2820, 84-2822.

23-111-302. Application generally — Issuance of temporary franchise — Hearing and appeal.

(a) Any corporation desiring a franchise to conduct greyhound racing in any county in which a current franchise for greyhound racing is not held by another shall file its application therefor with the Arkansas Racing Commission and deposit with the commission the sum of five thousand dollars ($5,000) to cover the expenses of publishing legal notices and to pay a pro rata part of the costs of the general election, all as provided in this chapter.

(b) The application shall set forth:

(1) The name of the corporation;

(2) The address of its principal office;

(3) The names and addresses of all of its officers and directors, a majority of whom must be residents of the State of Arkansas, and all of whom must be of good moral character;

(4) The name and address of its agent for service of process;

(5) Its latest financial statements;

(6) The estimated amount of funds which it proposes to spend for the acquisition of a site, the construction thereon of buildings and facilities, and the purchase of equipment for conducting racing meets;

(7) Copies of architectural plans and specifications for the buildings and facilities; and

(8) Such other information and requirements as the commission shall determine as necessary to enable it to pass upon the application.

(c)(1) Immediately upon the filing of each application, the commission shall investigate the personal background and financial responsibility of the officers, directors, and principal stockholders of the corporation, examine the plans and specifications of the buildings and facilities proposed to be constructed, and take into consideration such other facts and conditions as it shall find necessary or desirable in the premises. Within ninety (90) days after the date of the filing of any application, the commission shall grant, or refuse to grant, a temporary franchise to the corporation.

(2) However, in all instances the commission shall give the applicant, and all others who shall have filed written requests to be heard on the question, not less than ten (10) days' notice of the date it proposes to formally consider the application. All interested parties shall have the right to appear before the commission and be heard.

(3) The commission shall make a record of its proceeding at each hearing.

(d)(1) Should the commission refuse to grant a temporary franchise, it shall set forth in writing its reasons for the refusal. A copy of the writing shall immediately be sent to the applicant by registered or certified United States mail to the address listed in the application.

(2) Within sixty (60) days after the date of any refusal, the applicant may file with the commission amendments to the application for the purpose of overcoming any of the objections on which the commission based its refusal to grant a temporary franchise. Within thirty (30) days after receipt of the amendments, the commission shall either confirm its original refusal or it may grant a temporary franchise.

(3) Within twenty (20) days following the date of original refusal, or within twenty (20) days following the date of refusal after the filing of any amendments, the applicant may appeal to the Pulaski County Circuit Court, and it shall be tried de novo on the record of the hearing before the commission.

(4) An appeal may be taken by the commission or by the applicant from the circuit court to the Supreme Court. The appeal shall likewise be tried de novo.

(5) The mandate of the court shall be filed with the commission.

(e)(1) Should the commission grant a temporary franchise on its own motion or based upon the decision of the court, then the fact of the grant shall be certified by the commission to the Secretary of State, and the five thousand dollars ($5,000) deposited with it under the provisions of subsection (a) of this section shall be paid over to the Secretary of State by the commission.

(2) Should a temporary franchise not be granted pursuant to this section, the funds deposited with it under subsection (a) of this section shall be refunded to the corporation by the commission.

History. Acts 1957, No. 191, § 8; 1965 (2nd Ex. Sess.), No. 7, § 2; A.S.A. 1947, § 84-2823.

CASE NOTES

Constitutionality.

The fact that the 1965 amendment to this section was introduced during the last three days of the second extraordinary session did not violate Ark. Const. Art. 5, § 34, as that section does not apply to extraordinary sessions. Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).

Cited: Arkansas Racing Comm'n v. Emprise Corp., 254 Ark. 975, 497 S.W.2d 34 (1973).

23-111-303. Approval of electors required.

The Arkansas Racing Commission shall not be authorized to grant, nor shall it grant, a franchise to any corporation to conduct greyhound racing in any county in this state unless the commission has been authorized to grant a franchise as expressed by the approval of a majority of the qualified electors of the state voting on the proposition at the regular statewide biennial general election, as set forth in this chapter.

History. Acts 1957, No. 191, § 6; 1961, No. 56, § 1; 1965 (2nd Ex. Sess.), No. 7, § 1; A.S.A. 1947, § 84-2821.

CASE NOTES

Constitutionality.

The fact that the 1965 amendment to this section was introduced during the last three days of the second extraordinary session did not violate Ark. Const. Art. 5, § 34, as that section does not apply to extraordinary sessions. Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).

Cited: Glover v. Hot Springs Kennel Club, Inc., 230 Ark. 544, 323 S.W.2d 902 (1959).

23-111-304. Elections.

(a)(1) After receipt of the certification provided for in § 23-111-302(e), the Secretary of State shall cause to be published, by one (1) insertion in a newspaper of general circulation published in each county of the state, not less than thirty (30) days nor more than sixty (60) days before the next general election, a notice reading substantially as follows:

"NOTICE is hereby given that at the next general election the following question will be placed upon the ballot for the approval or rejection by the qualified electors of the state voting at such general election:

"Shall the Arkansas Racing Commission be authorized to grant a franchise to conduct greyhound racing in County, Arkansas?

"Given under my hand on this day of, 20.....

Secretary of State of the State of Arkansas".

(2) If there is no such newspaper published in any county, the notice may be published in any newspaper having a general circulation in the county.

(b) Within the time prescribed by law for the certification of other questions to be submitted to a vote of the people at a general election, the Secretary of State shall duly certify to the county boards of election commissioners of the several counties of the state the question as set forth in the notice provided for in subsection (a) of this section.

(c) The county board of election commissioners of each county shall cause to be printed on the general election ballot the following:

"Shall the Arkansas Racing Commission be authorized to grant a franchise to conduct greyhound racing in County, Arkansas?
FOR authorizing the Arkansas Racing Commission to grant a franchise to conduct greyhound racing in County, Arkansas ☐
AGAINST authorizing the Arkansas Racing Commission to grant a franchise to conduct greyhound racing in County, Arkansas ☐".

(d) The county boards of election commissioners shall canvass the vote and, as in the instance of other statewide measures voted on by the people, certify the results thereof to the Secretary of State who shall forthwith tabulate all returns so received by him or her and, by published notice in a newspaper having a statewide circulation, proclaim the result of the election, setting out in the proclamation the total vote for and against the question submitted as provided in subsection (c) of this section. The result of the election as so proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of publication of the proclamation. All contests in relation thereto shall be under the general election laws of this state.

(e) The Secretary of State shall file a certified copy of the proclamation with the Arkansas Racing Commission, and the commission shall immediately notify the corporation of the result of the election.

(f) If a majority of the qualified electors of the state voting on the question vote against authorizing the commission to grant the franchise to conduct greyhound racing in the county, the temporary franchise held by the corporation shall, ipso facto, be null and void as of the final date on which a contest of the results of the election may be commenced or, in the event of contest, upon the date of final determination of the issue.

(g) By use of the moneys deposited with the Secretary of State under the provisions of § 23-111-302(e), the Secretary of State shall first pay the cost of publication of legal notices required under this section, and any funds which remain from the deposit shall be paid over in equal amounts to the treasurers of the several counties of the state for credit to the general fund.

History. Acts 1957, No. 191, § 9; 1961, No. 56, § 2; 1965 (2nd Ex. Sess.), No. 7, § 3; A.S.A. 1947, § 84-2824.

CASE NOTES

Constitutionality.

The fact that the 1965 amendment to this section was introduced during the last three days of the second extraordinary session did not violate Ark. Const. Art. 5, § 34, as that section does not apply to extraordinary sessions. Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).

Cited: Glover v. Hot Springs Kennel Club, Inc., 230 Ark. 544, 323 S.W.2d 902 (1959).

23-111-305. Construction of racing plant — Issuance of permanent franchise.

(a)(1) If a majority of the qualified electors of the state voting on the question vote for authorizing the Arkansas Racing Commission to grant a franchise to conduct greyhound racing in the county, the corporation holding a temporary franchise, within ninety (90) days following the date of receipt of notification thereof from the commission as provided in § 23-111-304(d), shall acquire a site and commence the construction of buildings and facilities which it proposes to use in conducting greyhound racing meets.

(2) Failure of the corporation to acquire the site and commence construction within the ninety-day period shall constitute a forfeit of the temporary franchise.

(3) Should any holder of a temporary franchise acquire a site and commence construction within the ninety-day period but fail to complete construction and be open for business within one (1) year next following the end of the ninety-day period, or should the construction not be in substantial compliance with the plans and specifications theretofore filed with, and approved by, the commission, or should the aggregate total of costs of acquisition of a site, construction of buildings and facilities, and purchase of equipment be less than one million dollars ($1,000,000), then the commission shall cancel the temporary franchise, and the cancellation shall constitute a forfeit thereof by the corporation.

(4) However, nothing contained in this section shall be construed so as to prohibit mutual agreement on the part of the commission and the corporation to making such changes in the plans and specifications for construction as may be deemed necessary or desirable, but no changes may be agreed to which will have the effect of reducing the total aggregate cost of plant and equipment below one million dollars ($1,000,000).

(b) Upon completion of the plant within the time, in the manner, and at the minimum costs provided in subsection (a) of this section and the payment of a franchise fee in the amount of one thousand dollars ($1,000) to the commission by the holder of the temporary franchise, the commission shall issue its franchise in exchange for the temporary franchise held by the corporation. The corporation may then proceed to conduct greyhound racing meets in accordance with the provisions of this chapter or other applicable law, and the franchise shall thereafter be effective in the hands of the corporation unless and until terminated by operation of law, or sooner if terminated by the commission based upon the corporation's failure to comply with applicable greyhound racing laws or by the voluntary forfeiture of the franchise by the franchise holder.

History. Acts 1957, No. 191, § 11; 1965 (2nd Ex. Sess.), No. 7, § 4; A.S.A. 1947, § 84-2826.

CASE NOTES

Analysis

Constitutionality.
Cancellation of Franchise.

Constitutionality.

The fact that the 1965 amendment to this section was introduced during the last three days of the second extraordinary session did not violate Ark. Const. Art. 5, § 34, as that section does not apply to extraordinary sessions. Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).

Cancellation of Franchise.

This section makes it very clear that if the law is not complied with the kennel club could have its franchise cancelled after it has spent approximately a million dollars. Arkansas Racing Comm'n v. Hot Springs Kennel Club, Inc., 232 Ark. 504, 339 S.W.2d 126 (1960).

23-111-306. Subsequent referendum elections.

(a) After the elapse of not less than four (4) years next following the date of any election conducted pursuant to § 23-111-304, the county board of election commissioners shall call a special election in accordance with § 7-11-201 et seq. on the proposition of continuing greyhound racing in the county. The election shall be called upon petitions filed with it containing the signatures of qualified electors of the county of not less than five percent (5%) of the total number voting in the election for county clerk of the county at the next preceding general election, together with a sum of money estimated by the board as sufficient to pay all expenses of the election.

(b)(1) The date of the special election shall be fixed by the board on a day not more than ninety (90) days following the date of filing the petitions. The deposit of the funds as provided in subsection (a) of this section and the election shall be conducted and shall be subject to contest under the general election laws of this state.

(2) The proposition printed on the ballot shall be "FOR Greyhound Racing" and "AGAINST Greyhound Racing".

(3) By published notice, the board shall proclaim the results of the election and shall also certify the results to the Arkansas Racing Commission.

(4) All contests in relation to the results of the election shall be commenced within twenty (20) days next following the date of publication of notice as provided in subsection (a) of this section.

(c) If a majority of the qualified electors of the county voting on the question shall disapprove the continuance of greyhound racing, the franchise held by the corporation shall, ipso facto, be null and void as of the final date on which a contest of the results of the election may be commenced or, in the event of contest, upon the date of final determination of the issue.

History. Acts 1957, No. 191, § 10; 1968 (2nd Ex. Sess.), No. 15, § 1; A.S.A. 1947, § 84-2825; Acts 2005, No. 2145, § 61; 2007, No. 1049, § 83; 2009, No. 1480, § 101.

Amendments. The 2009 amendment substituted "§ 7-11-201 et seq." for "§ 7-5-103(b)" in (a).

Cross References. Election laws, § 7-1-101 et seq.

CASE NOTES

Cited: Glover v. Hot Springs Kennel Club, Inc., 230 Ark. 544, 323 S.W.2d 902 (1959).

23-111-307. Franchises granted prior to July 1, 1957.

(a)(1) Any permit granted prior to July 1, 1957, to conduct greyhound racing in this state is validated, and the action of the authority granting the permit is ratified and confirmed.

(2) Whether or not the permit has been granted for a definite period of time, the holder of the permit shall pay a franchise fee in an amount of one thousand dollars ($1,000) and shall be deemed to have a franchise upon compliance with provisions of this chapter.

(b) The franchise shall continue in effect so long as the holder thereof shall comply with all applicable laws of this state relating to greyhound racing or until the rights thereunder shall terminate by operation of law making greyhound racing unlawful in the area covered by the franchise or until the forfeit of the franchise by the holder thereof.

History. Acts 1957, No. 191, § 6; A.S.A. 1947, § 84-2821.

CASE NOTES

Rights of Franchise Holders.

Franchise holder's rights at time of cancellation were prospective in character, and a franchise granted to conduct dog racing is a privilege and not a property right. Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).

Cited: Glover v. Hot Springs Kennel Club, Inc., 230 Ark. 544, 323 S.W.2d 902 (1959).

23-111-308. Employees and patrons.

(a) No franchise holder shall permit any person under eighteen (18) years of age to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(b) The Arkansas Racing Commission shall have the right to require that every franchise holder shall employ residents of the State of Arkansas to the extent of eighty percent (80%) of the employees engaged in any greyhound race meet.

History. Acts 1957, No. 191, § 24; A.S.A. 1947, § 84-2839; Acts 1997, No. 584, § 1.

Subchapter 4 — Officers, Directors, Stockholders, Etc., of Franchises

SECTION.
23-111-401. Purpose.
23-111-402. Definition.
SECTION.
23-111-403. Sections 23-111-401, 23-111-402, 23-111-404, 23-111-

SECTION.
405, and 23-111-407 — 23-111-409 supplemental.
23-111-404. Application for franchise.
23-111-405. Investigation by Arkansas Racing Commission.
23-111-406. Electoral and residency requirement.
23-111-407. Report of changes.
23-111-408. Intergovernmental cooperation.
23-111-409. Employment of special investigators and other personnel.

Effective Dates. Acts 1968 (2nd Ex. Sess.), No. 8, § 11: became law without Governor's signature, June 4, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to dog racing are not entirely clear with respect to the authority of the Racing Commission to investigate the background of officers and stockholders of corporations applying for and corporations holding existing franchises to conduct dog racing; that it is in the best interests of the State of Arkansas and its citizens that this authority of the Commission be made clear in order that the Commission can effectively carry out its duty to supervise, regulate and control dog racing in this State in the public interest; and that this Act is immediately necessary to clarify the authority and responsibility of the Commission in this respect. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1969, No. 285, § 5: passed over Governor's veto, Mar. 18, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the conduct of a greyhound dog track in this State is a privilege which should be exercised by qualified and competent employees; that the officers and directors of any greyhound dog track should be residents of the county wherein such track is located and residents of this State in order to efficiently operate such track; and that only by the passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval."

Acts 1981, No. 443, § 3: Mar. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 285 of 1969 required that all officers and directors of greyhound dog tracks in this State be qualified electors of this State and shall have resided within the county in which the track is located for two (2) years prior to election or selection; that such requirement denies an opportunity for a greyhound dog track to have officers or directors who are not residents of the State of Arkansas but who can contribute substantially to the management and operation of such greyhound dog track; and that the immediate passage of this Act is necessary to amend Act 285 of 1969 to permit persons who are not residents of this State or of the county in which the track is located an opportunity to serve as an officer or member of the board of directors of said dog track, provided that, a majority of all such officers and directors at all times be composed of qualified electors of this State who have resided in the county in which the dog track is located for a period of not less than two (2) years and who maintain their residence in the county in which the track is located during their tenure as an officer or director thereof. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

23-111-401. Purpose.

(a) It is determined by the General Assembly that the business of conducting dog racing and pari-mutuel wagering thereon is so clothed with the public interest that the operation should be closely regulated and controlled to the end that the operation will not be conducted in a manner detrimental to the public interest of this state and its citizens and that the policy and manner of operation of the business is largely determined by those who have substantial financial interests in the corporate franchise holder.

(b) Therefore, it is the purpose and intent of §§ 23-111-402 — 23-111-405 and 23-111-407 — 23-111-409 to broaden, clarify, and strengthen the authority of the Arkansas Racing Commission to investigate the personal background of officers, directors, and principal stockholders of applicants for, and holders of, franchises to conduct dog racing in this state and to deny application for, suspend, or revoke a dog racing franchise upon the basis of the personal background of an officer, director, or principal stockholder of an applicant for, or holder of, a franchise, in order that the commission can better perform its duty to regulate and control dog racing in this state in the public interest.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 9; A.S.A. 1947, § 84-2823.9.

23-111-402. Definition.

For the purposes of §§ 23-111-401, 23-111-403 — 23-111-405, and 23-111-407 — 23-111-409, "principal stockholder" means every stockholder, either individual, partnership, association, or corporation, owning or having control of ten percent (10%) or more of the outstanding stock of a corporation which is an applicant for, or holder of, a franchise to conduct dog racing in this state.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 4; A.S.A. 1947, § 84-2823.4.

23-111-403. Sections 23-111-401, 23-111-402, 23-111-404, 23-111-405, and 23-111-407 — 23-111-409 supplemental.

The provisions of §§ 23-111-401, 23-111-402, 23-111-404, 23-111-405, and 23-111-407 — 23-111-409 are supplemental to the provisions of §§ 23-111-101 — 23-111-104, 23-111-201 — 23-111-205, 23-111-301 — 23-111-308, 23-111-501, and 23-111-506, and 23-111-508 — 23-111-514, and all other laws regarding dog racing in this state and shall not be construed to repeal or modify any of those laws.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 8; A.S.A. 1947, § 84-2823.8.

23-111-404. Application for franchise.

In addition to the information required by §§ 23-111-101 — 23-111-104, 23-111-201 — 23-111-205, 23-111-301 — 23-111-308, 23-111-501, and 23-111-506, and 23-111-508 — 23-111-514, every application filed with the Arkansas Racing Commission for a franchise to conduct dog racing in any county of this state shall set forth the total number of outstanding shares of stock of the applicant corporation and the number of the shares of stock owned or under the control of each of the stockholders of the applicant corporation.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 1; A.S.A. 1947, § 84-2823.1.

23-111-405. Investigation by Arkansas Racing Commission.

(a)(1)(A) The Arkansas Racing Commission is authorized to conduct a thorough investigation of the personal background of each officer, each director, and each principal stockholder of an applicant for, or holder of, a franchise for conducting dog racing in this state.

(B) In the event a corporation, partnership, or association qualifies as a principal stockholder of an applicant for, or holder of, a franchise for conducting dog racing in this state, then the commission is authorized to conduct a thorough investigation of the personal background of each officer, director, and stockholder of the corporation or the personal background of each member of the partnership or association.

(2) In investigating the personal background of an officer, director, or principal stockholder of an applicant for, or holder of, a dog racing franchise, or the officers, directors, and stockholders of a corporation qualifying as a principal stockholder or the members of any partnership or association qualifying as a principal stockholder, the commission may take into consideration:

(A) Present and past business associations of a person and corporate stockholdings of the person;

(B) Any connection the person has or may have had with any gambling operations or other unlawful operations in this state or any other state;

(C) Any criminal convictions of the person; and

(D) Such other matters as the commission shall deem helpful in determining whether the ownership by the person, corporation, partnership, or association qualifying as a principal stockholder of a substantial amount of stock in the corporate applicant for, or holder of, a franchise to conduct dog racing in this state would or would not be detrimental to the public interest of this state.

(b) The commission may refuse to grant a franchise or temporary franchise or it may suspend or revoke an existing franchise if after investigation and hearing it determines that an officer, director, or principal stockholder of the applicant for, or holder of, a franchise is of undesirable personal background.

(c) The commission may refuse to grant a franchise or temporary franchise or it may suspend or revoke an existing franchise if after investigation and hearing it determines that an officer, director, or stockholder of a corporation qualifying as a principal stockholder under § 23-111-402 or a member of any partnership or association qualifying as a principal stockholder under the provisions of § 23-111-402 is of undesirable personal background.

(d)(1) Before the commission refuses to grant any franchise or temporary franchise or suspends or revokes an existing franchise on the basis of the personal background of any officer, director, or principal stockholder of the applicant for, or holder of, a franchise, the commission shall:

(A) Set a date and time for a hearing on the matter;

(B) Notify the applicant or franchise holder of:

(i) The specific findings of the commission upon the basis of which it proposed to refuse, suspend, or revoke the franchise; and

(ii) The date and time of the hearing; and

(C) At least ten (10) days prior to the hearing, publish notice of the hearing in a newspaper of general circulation in the county in which dog racing is held or proposed to be held under the franchise.

(2) Notice shall be given to the applicant or franchise holder by registered mail addressed to the applicant or franchise holder at its principal office as shown in the application or in other records of the commission at least ten (10) days prior to the date of the hearing.

(3) At the hearing the applicant for, or holder of, a franchise and other interested persons shall be permitted to appear and present evidence relevant to the issue or finding upon which the commission proposes to deny, suspend, or revoke a franchise.

(4) All proceedings before the commission pursuant to this section and the right of appeal therefrom shall be conducted in accordance with, and taken in the manner provided in, and in every way subject to, the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1968 (2nd Ex. Sess.), No. 8, §§ 3, 5; A.S.A. 1947, §§ 84-2823.3, 84-2823.5.

23-111-406. Electoral and residency requirement.

(a) A majority of all officers and directors of any greyhound dog track in this state shall be qualified electors of this state who have resided in the county in which the track is located for a period of not less than two (2) years and shall maintain a residence in the county during their tenure as officers or directors thereof.

(b) Any person who may be elected or selected as an officer or director of any greyhound dog track, prior to his or her election or selection, shall submit to the Arkansas Racing Commission a duly verified affidavit setting forth information indicating whether he or she is a qualified elector of this state, his or her place of residence, and the

period of time during which he or she has resided at his or her place of residence, in order that the commission may determine that the provisions of this section are being complied with.

(c) If there is any change in any of the material facts noted on the verified affidavit filed with the commission by the officer or director of a greyhound dog track, the officer or director, within thirty (30) days after the occurrence of the change, shall submit a new verified affidavit to the commission as required in this section, noting the change.

(d) Any person who furnishes false information in the affidavit filed with the commission as required in this section or fails to file a replacement verified affidavit with the commission within thirty (30) days after the change of any material fact noted on the affidavit previously filed with the commission shall be guilty of a Class A misdemeanor.

History. Acts 1969, No. 285, §§ 1, 2; 1981, No. 443, §§ 1, 2; A.S.A. 1947, §§ 84-2823.10, 84-2823.11; Acts 2005, No. 1994, § 232.

CASE NOTES

Constitutionality.

This section constitutes a reasonable exercise of the state's police power and is valid. Rodgers v. Southland Racing Corp., 247 Ark. 1115, 450 S.W.2d 3, appeal dismissed, 400 U.S. 809 (1970).

23-111-407. Report of changes.

Every holder of a franchise to conduct dog racing in this state shall report any and all changes in its board of directors, executive officers, and other management personnel, and all changes in the ownership of its stock, to the Arkansas Racing Commission within ten (10) days next following such a change.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 2; A.S.A. 1947, § 84-2823.2.

23-111-408. Intergovernmental cooperation.

The Arkansas Racing Commission is authorized to cooperate with and share information with federal officers and agencies and with officers and agencies of this state and subdivisions thereof and officers and agencies of other states and subdivisions, to the extent that the commission deems necessary or helpful to it in carrying out the purposes of §§ 23-111-401 — 23-111-405, 23-111-407, and 23-111-409.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 6; A.S.A. 1947, § 84-2823.6.

23-111-409. Employment of special investigators and other personnel.

The Arkansas Racing Commission is authorized to employ such special investigators and other personnel as it shall deem necessary to

investigate the personal background of officers, directors, and principal stockholders of applicants for and holders of dog racing franchises and to do and perform all other acts and functions it deems necessary to carry out the purpose and intent of §§ 23-111-401 — 23-111-405, 23-111-407, and 23-111-408.

History. Acts 1968 (2nd Ex. Sess.), No. 8, § 7; A.S.A. 1947, § 84-2823.7.

Subchapter 5 — Conduct of Meets

SECTION.
23-111-501. Accordance with franchise required.
23-111-502. Racing days and hours generally.
23-111-503. Additional racing days for benefit of city general fund and Division of Developmental Disabilities Services.
23-111-504. Additional racing days for municipal assistance — Distribution of net proceeds to municipalities.
23-111-505. Additional racing days for benefit of indigent patients, etc.
23-111-506. Application for license to conduct meet — Issuance.
23-111-507. [Repealed.]
23-111-508. Wagering.
23-111-509. Disposition of wagering money.
23-111-510. Admission tax.
23-111-511. Record keeping by franchise holder — Audit.
23-111-512. Commission's access to meets, books, records, etc.
23-111-513. Failure to pay tax.
23-111-514. Franchise holder required to give bond.
23-111-515. Additional racing days for the benefit of small municipalities and community colleges.
23-111-516. Health insurance.
23-111-517. Disposition of pari-mutuel tax revenue.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-4 and §§ 23-111-501 — 23-111-514 may not apply to §§ 23-111-515 — 23-111-517 which were enacted subsequently.

Effective Dates. Acts 1957, No. 191, § 30: July 1, 1957.

Acts 1965, No. 142, § 5: Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas: (a) that traffic accidents resulting in injuries and deaths of persons and damages to property are increasing at an alarming rate; (b) that present revenues for employment of personnel in the Department of Arkansas State Police are wholly inadequate to properly handle the problem of highway safety; and (c) that only the provisions of this act will tend to provide funds in amounts sufficient to employ the necessary personnel to patrol the highways and thereby reduce the incidence of highway accidents. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of public peace, health and safety shall take effect and be in full force on and after its passage and approval."

Acts 1971, No. 382, § 5: Mar. 24, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present greyhound racing law provides that the track retain ⅓ of all odd cents or breakage and ⅓ of the value represented by lost and void pari-mutuel tickets; that it is immediately necessary to provide cities in which greyhound race tracks are located additional funds in order that such cities may properly police and enforce dog racing in such city and that this Act is designed to provide such additional funds by giving that portion of the breakage and that portion of the value

of void pari-mutuel tickets heretofore retained by the track to the city in which the track is located. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 780, § 5: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Sixty-Ninth General Assembly has provided additional funds for the support of the Police Services Division of the Department of Public Safety from the General Revenues of the State; that since such additional General Revenue funds are provided, it is desirable that certain funds heretofore designated as Special Revenues for the support of the State Police be hereafter designated as General Revenues, and that it is essential that this Act become effective on July 1, 1973, in order to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1973."

Acts 1973, No. 879, § 2: Apr. 16, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the providing of youth recreational and related activities by charitable non-profit organizations in cities in this State in which dog racing tracks are located is of benefit to the young people of said city, and that the immediate passage of this Act is necessary to authorize cities of this State to use moneys now received from the uncollected winning pari-mutuel tickets at dog racing tracks for the benefit of youthful females of said city, and that the immediate passage of this Act is necessary to accomplish said purpose. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 352, § 3: Mar. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to enable the State Racing Commission to adequately and efficiently regulate the conduct of horse and greyhound racing meets in this State it is necessary to establish appropriate fees for the owners, trainers, jockeys, and jockey agents at such racing meets. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 424, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional funds are needed for the support of essential services of the State of Arkansas which derive support from the 'general revenues' of the State; that the providing of a special excise tax to be levied upon moneys bid at greyhound races in this State will provide the funds required not only to maintain levels of services, but also to provide funds required to meet expanding needs for nursing home services, the relieving of overcrowded conditions at the penal facilities of the Department of Correction, the providing of health care and services for crippled children and indigent patients at State-supported facilities, and other essential services, and that the immediate passage of this Act is necessary in order to enable the State to collect such additional taxes for the entire duration of the greyhound racing meets held in this State during the calendar year 1983. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 383, § 6: Mar. 24, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional general revenue funds will be necessary to enable the public schools of this State to meet the minimum standards required under the Quality Education Act; that the Department of Correction will be unable to open beds required to house inmates committed to the Department, and that the Department of Human Services will find it necessary to curtail essential medical, hospital, and nursing home services for indigents of this State, unless additional general revenue funds are provided; and that the revenues to be produced under the provisions of this Act will assist in relieving such problems.

Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 238, § 6; Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the 77th General Assembly, in Regular Session, that competition outside the State of Arkansas is detrimental to a regulated industry within this State, and the economic change in the racing industry adversely affects the benefits to the State of Arkansas, and that the effectiveness of this Act is essential to the protection of a regulated industry and the benefits to the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 850, § 5: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the method of distributing the money wagered at the dog racing tracks in Arkansas needs to be revised and that, unless this method of distribution is changed, serious financial harm might occur to the dog racing franchise holders. Therefore, in order to insure that imminent financial harm does not occur, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1163, § 5: Apr. 14, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in immediate need of additional revenues to provide adequate funding for essential services required by the citizens of this State; that the Medicaid Program is in desperate need of funds; that this act is necessary to generate revenue; and that unless this act goes into effect immediately, the services provided the citizens of this State will be drastically curtailed. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 342 and 347, § 6: Feb. 16, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas that the state's greyhound pari-mutuel racetrack located in Crittenden County, Arkansas, and its constituent business base composed of kennel owners, breeders, trainers, and local business have been severely damaged by the development of casino gaming in the State of Mississippi. Casino gaming in Mississippi pays a disproportionately lower tax, allowing those operators to spend correspondingly higher amounts for marketing and promotion. The state's greyhound racetrack needs substantial renovation and needs substantial investment to promote attendance and tourism in order to compete. An immediate restructuring of the statutorily mandated payments is required to enable the state's greyhound racetrack to improve purse structures for the kennel owners; enhance the required charitable contributions which benefit all citizens in the state; to continue to provide a significant employment base; and in order to maintain the viability of greyhound pari-mutuel racing in this state. The legislature hereby declares an emergency to exist and this act shall take effect immediately upon its passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1509, § 9: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act is necessary in order to eliminate confusion and conflict regarding the interpretation of Arkansas Code 23-111-509 and to facilitate the collection and distribution of funds as referenced therein. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1837, § 3: became law without Governor's signature Apr. 19, 2001. Emergency clause provided: "It is determined by the General Assembly that greyhound racing and activities related thereto in Arkansas have a significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, that the competition from outside the State of Arkansas is having an adverse impact on the greyhound racing industry in Arkansas, that it is imperative that Arkansas franchise holders be able to increase purses, improve facilities and encourage patronage and tourism in order to keep up with competition and hold and improve Arkansas' premiere and traditional position in greyhound racing, and in order to accomplish these goals, essential to the welfare of the State and its citizens and residents, this act must be effective immediately. Therefore, an emergency is hereby declared to exist, and this act, being immediately necessary for the preservation of the public peace, health and safety, shall take effect, and be in full force, immediately from and after the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last House overrides the veto."

Acts 2001, No. 1666, § 92: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001. Provided however, that the Section which amends Act 937 of 1999, the Section that provides $6,750,000 in supplemental appropriation for Disaster Assistance and the Section that provides $1,500,000 in supplemental appropriation for Disaster Assistance—Federal shall be effective on the date of its passage and approval."

Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall

become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 350, § 8: Mar. 14, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission's authority to impose certain fees and penalties will expire unless specific statutory authority to assess such fees and penalties is enacted and becomes law; and the Arkansas Racing Commission's power to assess such fees and penalties is imperative to the Arkansas Racing Commission's ability to effectively supervise and regulate, in the public interest, horse racing and greyhound racing in Arkansas. It is further found and determined by the General Assembly of the State of Arkansas that there would be a loss of revenue to the state if wagers on horse racing and greyhound racing are not permitted to be placed by additional forms of communication by patrons of Arkansas horse racing and greyhound racing tracks, whether or not the patron is located on the grounds of the race track facility when placing the wager. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

23-111-501. Accordance with franchise required.

(a) Any franchise holder or any person aiding or abetting in the holding or conducting of any greyhound racing meet at which greyhound racing shall be permitted for any stake, purse, or reward except in accordance with a franchise duly issued as provided in this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished for each offense by a fine of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) or by imprisonment for not more than one (1) year, or by both fine and imprisonment.

(b) For the purposes of this section, each day of racing in violation of the provisions of this chapter shall be considered as a separate and distinct offense.

History. Acts 1957, No. 191, § 17; A.S.A. 1947, § 84-2832.

23-111-502. Racing days and hours generally.

(a)(1) Upon application of the dog racing franchise holder, the Arkansas Racing Commission may authorize each dog racing franchise holder to conduct during any calendar year greyhound racing on the

days and during the hours as determined by the commission and as set forth in its rules.

(2) The commission's rules and regulations shall be in the best interests of the dog racing franchisee, kennel owners, and greyhound racing in the State of Arkansas.

(3) Greyhound racing on Easter Sunday or Christmas Day is prohibited.

(b) The racing days provided for under §§ 23-111-503 — 23-111-505 shall be conducted on the days and during the hours determined by the commission under subsection (a) of this section.

History. Acts 1985, No. 924, § 1; A.S.A. 1947, § 84-2848; Acts 1987, No. 383, § 1; 1989, No. 238, § 1; 1995, No. 342, § 1; 1995, No. 347, § 1; 2013, No. 351, § 1.

Amendments. The 2013 amendment rewrote the section catchline and the section.

23-111-503. Additional racing days for benefit of city general fund and Division of Developmental Disabilities Services.

(a) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct three (3) additional days of racing at any dog racing meet. The franchise holder shall agree that the net proceeds derived from the additional days shall be credited as follows:

(1) One-third (⅓) to be deposited with the city treasurer or collector of the city in which the dog racing track is located for credit to the city general fund to be used for charitable purposes only, as determined by the mayor and governing body; and

(2) Two-thirds (⅔) to be deposited with the Treasurer of State as special revenue to be used for the sole benefit for community programs of the Division of Developmental Disabilities Services of the Department of Human Services.

(b) Employees of the dog racing track shall be allowed to donate their services for the additional days of dog racing allowed by the commission under this section.

(c) Net proceeds derived from the additional days of dog racing shall be the proceeds derived from the pari-mutuel wagering at, and admissions to, the dog racing track less the cost of salaries, if any, of all employees, fuel, lights, purses, taxes, and other fees and costs incurred by the franchise holder in conducting the additional days of racing.

(d) The commission shall establish appropriate rules and regulations to assure compliance with the provisions of this section and shall audit and verify all receipts and expenditures of the franchise holder in determining compliance with this section.

History. Acts 1985, No. 924, § 2; A.S.A. 1947, § 84-2849; Acts 1987, No. 383, § 2.

23-111-504. Additional racing days for municipal assistance — Distribution of net proceeds to municipalities.

(a) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct six (6) additional days of racing during each calendar year in addition to any other days of dog racing authorized by law.

(b) The net proceeds, as defined in § 23-111-503, derived from two (2) of the additional days of dog racing shall be deposited with the Treasurer of State as special revenue for credit to the Municipal Aid Fund. Moneys deposited into the fund shall be distributed to all municipalities located in the county in which the dog racing meet is held, except the municipality in which the dog racing track is located, with each municipality to receive such portion of the fund as the population of the municipality bears to the total population of all participating municipalities in the county.

History. Acts 1985, No. 924, § 3; A.S.A. 1947, § 84-2850.

23-111-505. Additional racing days for benefit of indigent patients, etc.

(a) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct fifteen (15) additional days of racing during each twelve-month period. The additional days of racing may be divided between each of the two (2) racing meets allowed by § 23-111-502, or all the additional days of racing may be added to a single racing meet as determined by the commission. In the event the additional days allowed by the commission fall upon a Saturday or Saturdays, then the franchise holder, at its option, may conduct daylight racing as authorized for a regular racing meet.

(b)(1) All revenue derived from the pari-mutuel tax at the fifteen (15) additional days of racing authorized by subsection (a) of this section after moneys have been remitted by the franchise holder to Mid-South Community College as provided by § 23-111-517 shall be deposited with the Treasurer of State as special revenue for credit to the Indigent Patient's Fund, to be used by Mississippi County, Poinsett County, Cross County, St. Francis County, and Lee County to defray the cost of hospitalization and other medical services of indigent Arkansas patients in healthcare facilities for which the county has not received total reimbursement.

(2) Each county shall certify to the Chief Fiscal Officer of the State the amount of the unreimbursed medical expenses under such procedures and such detail as required by the Department of Finance and Administration.

(3) The amount available to each county shall be no more than one-fifth (⅕) of the total funds available or the amount certified of unreimbursed medical expenses, whichever is less.

(c) The commission is authorized to allow each dog racing franchise holder to conduct two (2) additional days of racing at any dog racing meet. The net proceeds derived from these additional days shall be deposited with the city treasurer or collector of the city in which the dog racing track is located for credit to the city general fund to be used for providing assistance and relief to disaster victims, indigent persons, organizations which assist such persons, and for education purposes.

History. Acts 1985, No. 924, § 4; A.S.A. 1947, § 84-2851; Acts 1987, No. 383, § 3; 1989, No. 238, § 2; 2001, No. 1666, § 22.

A.C.R.C. Notes. Acts 2014, No. 285, § 58, provided:

"(b) All revenue derived from the parimutuel tax at the fifteen (15) additional days of racing authorized by subsection (a) of Ark. Code 23-111-505 after monies have been remitted by the franchise holder to Mid-South Community College as may be provided by law, shall be deposited with the Treasurer of State as special revenue for credit to the Indigent Patients Fund, to be used to defray the cost of hospitalization and other medical services of indigent Arkansas patients in health care facilities by Mississippi County, Poinsett County, Cross County, St. Francis County and Lee County for which the county has not received total reimbursement. Each county shall certify to the Chief Fiscal Officer of the State the amount of the unreimbursed medical expenses under such procedures and such detail as required by the Department of Finance and Administration. The amount available to each county shall be no more than one-fifth (⅕) of the total funds available or the amount certified of unreimbursed medical expenses, whichever is less."

23-111-506. Application for license to conduct meet — Issuance.

(a)(1) Before any franchise holder conducts a racing meet in the county in which it holds a franchise, it shall file with the Arkansas Racing Commission an application to hold the meet and a bond in the sum of ten thousand dollars ($10,000) payable to the State of Arkansas, with a surety to be approved by the commission, conditioned that the franchise holder shall:

(A) Faithfully make the payments to the commission;

(B) Keep its books and records and make reports as provided in this chapter; and

(C) Conduct the greyhound racing in conformity with this chapter.

(2) The application shall specify the dates on which it is intended or desired to conduct or hold the meet and such further information as the commission may prescribe.

(3)(A) The license fee required to be paid by the franchise holder under the provisions of this section shall be computed at the rate of three hundred dollars ($300) per day, payable each day of the meet to the commission.

(B) The license fee imposed by this section shall be in lieu of all other license or occupation fees or taxes which otherwise would be due by the franchise holder to the State of Arkansas, or to any of its political subdivisions.

(b)(1) Each application shall be filed with the commission at least one hundred twenty (120) days prior to the date upon which it is desired to begin the racing meet.

(2) Whenever mutually agreeable to the commission and the franchise holder, the commission may allot racing dates other than those requested in the application.

(c) Immediately following the allotting of any racing dates and the issuance of a license to hold a racing meet, the commission shall notify the franchise holder of the dates allotted. The notice shall be in writing and sent by registered or certified United States mail to the franchise holder. Each notice and license shall be mailed by the commission at least ninety (90) days before the date fixed for the beginning of the racing meet.

(d)(1) Each license shall specify:

(A) The name of the franchise holder;

(B) The dates on which the racing meet shall be held or conducted; and

(C) The location of the place, track, or enclosure at which the racing meet is to be conducted.

(2) No license shall be transferable, nor shall it apply to any place, track, or enclosure other than the one specified in the license.

(e)(1) If the commission refuses an application for a license, it shall notify the franchise holder. This notice must be in writing and sent by registered or certified United States mail to the franchise holder and shall be mailed by the commission at least twenty (20) days before the date fixed in the application for the beginning of the racing meet. In each instance the notice shall contain the reasons for refusal of the application.

(2) No application shall be refused until after the franchise holder has been granted a hearing by the commission.

History. Acts 1957, No. 191, § 14; 1971, No. 30, § 1; A.S.A. 1947, § 84-2829.

23-111-507. [Repealed.]

Publisher's Notes. This section, concerning requird licenses for greyhound owners and greyhound trainers, was repealed by Acts 2007, No. 856, § 4. The section was derived from Acts 1957, No. 191, § 16; 1975, No. 352, § 2; A.S.A. 1947, § 84-2831.

23-111-508. Wagering.

(a)(1) Any franchise holder conducting a greyhound racing meet may provide places in the race meeting grounds, or enclosure, at which it may conduct and supervise the pari-mutuel or certificate system of wagering by patrons on the races conducted by the franchise holder at the meeting.

(2) The pari-mutuel or certificate method of wagering upon races held at the race track, within the race track, and at the racing meet shall not under any circumstances, if conducted under the provisions of this chapter, be held or construed to be unlawful, all other laws or parts of laws of the State of Arkansas to the contrary notwithstanding.

(b) No other place or method of wagering shall be used or permitted by the franchise holder, unless permitted under subsection (d) or subsection (e) of this section, nor shall the pari-mutuel or certificate system of wagering be conducted on any races except races at the race track where the franchise holder holds a current license issued by the Arkansas Racing Commission.

(c) No franchise holder shall permit any minor to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(d)(1)(A) However, nothing contained in this section shall be construed to permit the pari-mutuel or certificate method of wagering upon any race track unless the track is licensed as provided by this chapter.

(B) It is declared to be unlawful for any franchise holder to permit, conduct, or supervise any pari-mutuel or certificate method of wagering upon any race track except in accordance with the provisions of this chapter.

(2) There shall be no wagering on the results of any races except under the pari-mutuel or certificate method of wagering, as provided in this chapter, and then only by the installation and use of equipment approved by the commission.

(3) In addition to the pari-mutuel or certificate system of wagering as authorized by this chapter, the commission is authorized and directed to establish and adopt rules and regulations permitting the conduct of pari-mutuel or certificate system of wagering upon racing, either horse or greyhound, shown live or in any other manner approved by the commission by television or otherwise to or from the premises of the franchise holder.

(4) Any franchise holder using or permitting wagering or any person wagering under any other method at a licensed race track shall be guilty of a Class D felony for each such offense.

(e)(1) With the prior approval of the commission and pursuant to rules adopted by the commission, a franchise holder's patrons with money on deposit in an account with the franchise holder may place wagers by communication through telephone or other mobile device or through other electronic means on races conducted at the franchise holder's race track facility and horse races or greyhound races at other racetracks, whether or not the patron is located on the grounds of the franchise holder's race track facility when placing the wager.

(2) Wagers accepted by the franchise holder under this subsection shall be treated for all purposes under this chapter as a wager made by the patron on the grounds of the franchise holder's race track facility.

History. Acts 1957, No. 191, § 18; A.S.A. 1947, § 84-2833; Acts 1987, No. 383, § 5; 1989, No. 238, § 3; 1999, No. 473, § 1; 2005, No. 1994, § 486; 2013, No. 350, §§ 6, 7.

Amendments. The 2013 amendment inserted "unless permitted under subsection (d) or subsection (e) of this section" in (b); and added (e).

Cross References. Wagering on horse races, § 23-110-405.

CASE NOTES

Cited: In re Armstrong, 217 B.R. 569 (Bankr. E.D. Ark. 1998).

23-111-509. Disposition of wagering money.

(a) Each franchise holder conducting a racing meet under the provisions of this chapter shall keep its books and records in such manner as to clearly show the total amount of moneys wagered on each race held or conducted at each meet and the disposition of the moneys.

(b)(1) In the calendar year 1995 and each calendar year thereafter, the franchise holder shall withhold and retain for its own use and benefit sixteen percent (16%) of all moneys wagered on live, on-premises races up to and including one hundred twenty-five million dollars ($125,000,000) and twelve percent (12%) of all moneys wagered on live, on-premises races in excess of one hundred twenty-five million dollars ($125,000,000).

(2)(A) From the amount withheld and retained by the franchise holder, the franchise holder shall agree that the following credits will be made in the following percentage amounts of all moneys wagered on live, on-premises races up to and including one hundred twenty-five million dollars ($125,000,000) per calendar year, which shall be in addition to any other credits or payments:

(i) Seven-eighths of one percent (.875%) to be used by the franchise holder for supplements for increasing purses awarded at races conducted at the franchise holder's facility;

(ii) Three-eighths of one percent (.375%) to the institutions or funds described in §§ 23-111-503 — 23-111-505 and 23-111-515 on a proportionate basis;

(iii) One-half of one percent (0.5%) to be used by the franchise holder for capital improvements to be made by the franchise holder at the racing facility; and

(iv) One-half of one percent (0.5%) to be used by the franchise holder for promotions to be conducted by the franchise holder to encourage patronage and tourism.

(B) These credits will not accrue on moneys wagered on live, on-premises races in excess of one hundred twenty-five million dollars ($125,000,000) per calendar year.

(C) The Arkansas Racing Commission may audit and verify receipts and expenditures of the franchise holder in determining compliance with this subdivision (b)(2).

(D) If there is a final determination by the commission that any of the credits or payments provided in this subsection have not been used for the purposes specified in this section, the franchise holder shall pay the amount equal to any moneys used for an unauthorized purpose to the commission for the use and benefit of the State of Arkansas.

(3)(A) "Capital improvements" as used in this section shall include all items and expenditures incurred for new construction with related

equipment, reconstruction, renovation, reconditioning, and repairing of facilities with related equipment, or for debt service on money borrowed by the franchise holder for those enumerated purposes.

(B) In the case of capital improvements, the commission may use a multiyear approach based on a multiyear program being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multiyear period out of the capital improvement moneys derived during the multiyear period.

(c)(1) In the calendar year 1995 and each calendar year thereafter, for all racing meets conducted by the franchise holder, the franchise holder shall withhold and pay to the commission for the use and benefit of the State of Arkansas, as a privilege tax:

(A) Three percent (3%) of all moneys wagered on live, on-premises races up to and including one hundred twenty-five million dollars ($125,000,000), together with one-third (⅓) of the odd cents or breaks; and

(B) Seven percent (7%) of all moneys wagered on live, on-premises races in excess of one hundred twenty-five million dollars ($125,000,000), together with one-third (⅓) of the odd cents or breaks.

(2)(A) For all races simulcast to the grounds of the franchise holder's Arkansas race track from other race tracks and races conducted in the past and rebroadcast by electronic means and shown on a delayed or replayed basis on the grounds of the franchise holder's Arkansas race track under § 23-111-508(d)(3), the franchise holder shall withhold and pay to the commission for the use and benefit of the State of Arkansas, as a privilege tax, one percent (1%) of all moneys wagered on such races on the grounds of a franchise holder's Arkansas race track.

(B) From the one percent (1%) reduction in the simulcast privilege tax provided for in this section, the franchise holder shall agree that the following credits shall be made in the following percentage amounts, which shall be in addition to any other credits for payments:

(i) One-fourth of one percent (0.25%) to be used by the franchise holder for supplements for increasing purses awarded at races conducted at the franchise holder's facility;

(ii) One-fourth of one percent (0.25%) to be used by the franchise holder for promotions conducted by the franchise holder to encourage patronage and tourism;

(iii) One-fourth of one percent (0.25%) to be used by the franchise holder for capital improvements made by the franchise holder at the racing facility;

(iv) One-fifth of one percent (0.20%) to be used by the franchise holder to directly offset increased simulcasting expenses over and above those incurred during calendar year 2000, including interface fees, host signal fees, licensing fees, and equipment costs related to

simulcast. The franchise holder shall provide such information necessary to reflect the increase in simulcast expenses. Any portion of this amount not needed to offset increased simulcast expenses shall be paid to the commission for the use and benefit of the State of Arkansas; and

(v) Five one-hundredths of one percent (0.05%) to be distributed as provided in § 23-111-515(b)(1)(B).

(C)(i) The commission shall seek the assistance of the Department of Finance and Administration to audit and verify receipts and expenditures of the franchise holder in determining compliance with this section. The franchise holder must deliver to the department any documents requested to check and verify compliance with this section within thirty (30) days of receiving a written request for the documents. If the department does not receive the requested documents within the time provided, the Director of the Department of Finance and Administration shall notify the commission, which shall issue an order to show cause why such documents have not been provided.

(ii) The franchise holder shall not be permitted credit for expenditures under this section until the franchise holder submits documentation of each expenditure listing the specific expenditure and the payee of the expenditure and stating in specific terms the benefit created by the expenditure.

(iii) In the case of patronage and tourism promotion and capital improvements, the commission may use a multiyear approach based on a multiyear program's being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multiyear period out of the patronage and tourism promotion and capital improvement moneys derived during the multiyear period, provided that the multiyear period shall not exceed five (5) years, unless the commission makes a specific determination that a longer period is necessary to finance long-term construction projects for the joint benefit of patrons, dogmen, and the franchise holder.

(iv) The franchise holder may seek prior approval of expenditures from the commission for expenditures. The application for such approval must contain the information required by this section. The prior approval will be subject to final verification by the department and approval by the commission that the expenditure meets the requirements of this section.

(3) The licensee shall withhold no more than nineteen percent (19%) of the total moneys wagered in simulcast racing, except when the state of the host race meet allows for withholding a greater percentage, then the licensee shall withhold no more than the percentage allowed by the state of the host meet.

(d) The franchise holder shall withhold and pay to the city or town in which the race track is located two-thirds (⅔) of the odd cents or breaks on all moneys wagered on live, on-premises races and on simulcast races, or if the track is not located within the corporate limits of a city

or town, then the two-thirds (⅔) of the odd cents or breaks on all money wagered on live, on-premises races and on simulcast races shall be paid to the county in which the track is located.

(e)(1) Excepting only the moneys retained for the use and benefit of the franchise holder, the amounts paid to the commission for the use and benefit of the State of Arkansas, and the amount paid to the city, town, or county, as provided in subsection (d) of this section, all moneys received by the franchise holder from wagers shall be paid over to patrons holding winning pari-mutuel tickets, as their respective interests may appear, upon presentation of the tickets.

(2)(A) However, all winning pari-mutuel tickets not presented to the franchise holder for redemption on or before the one hundred eightieth day next following the last racing day of each racing meet hereafter held shall be void.

(B) Of the moneys represented by the void pari-mutuel tickets, the franchise holder shall immediately distribute the proceeds as follows:

(i) One-half (½) of the amount thereof shall be paid to the treasurer of the county in which the racing track is located for credit to the general fund of the county; and

(ii) One-half (½) of the amount thereof shall be paid to the treasurer of the city in which the racing track is located and shall be credited to the general fund of the city.

(C) The money shall be used for charitable purposes only, benefiting young females and young males of the city as determined by the mayor and the governing body of the city. It is the intent that the funds shall be made available to and used by the Boys and Girls Clubs or similar nonprofit charitable organizations providing recreational youth services benefiting young females and young males of the city.

(f) Breaks or breakage shall be computed as the amount of odd cents remaining in each pari-mutuel pool after redistributions are made in a sum equal to the next lowest multiple of ten cents (10¢). Provided, in the event of a minus pool, the commission shall have the authority to establish the minimum payout on winning wagers.

(g) All moneys due the State of Arkansas by the permit holder under subsection (c) of this section shall be paid to the commission daily, and all amounts due the city, town, or county under subsection (d) of this section shall be paid over to the treasurer of the city, town, or county immediately following the close of the racing meet.

(h) The rate of tax on any additional methods of wagering shall be established by law.

History. Acts 1957, No. 191, § 19; 1965, No. 142, § 2; 1971, No. 382, §§ 1-3; 1973, No. 780, § 2; 1973, No. 879, § 1; 1983, No. 424, § 1; A.S.A. 1947, §§ 84-2834, 84-2834.1; Acts 1987, No. 383, § 4; 1991, No. 850, § 1; 1993, No. 1163, § 1; 1995, No. 342, § 2; 1995, No. 347, § 2; 1999, No. 473, § 2; 1999, No. 1509, §§ 1-3; 1999, No. 1585, § 2; 2001, No. 1837, §§ 1, 2.

Publisher's Notes. Acts 1973, No. 780, § 4, provided that it was the purpose and intent of the act to classify the revenues received by the state from the pari-mutuel

tax on horse and dog racing and those represented by void pari-mutuel tickets on horse and dog racing as general revenues.

Acts 1983, No. 424, § 2, provided that the act was intended to be cumulative to the greyhound racing laws of this state.

Acts 1999, No. 1509, § 4, provided: "It is hereby found and determined by the Eighty-Second General Assembly of the State of Arkansas that confusion and conflict has developed over the proper interpretation of the provisions of Arkansas Code § 23-111-509, as amended herein; that these amendments are necessary to clarify and resolve such confusion and conflict, and are consistent with the original intent of past General Assemblies and with the interpretation accorded by the Department of Finance and Administration and by the Arkansas Racing Commission; and that these amendments therefore shall be retroactive to the dates of their respective, original dates of original enactment."

Cross References. Wagering on horse races, § 23-110-405.

23-111-510. Admission tax.

(a)(1) Each franchise holder authorized to conduct a race meeting under this chapter shall pay to the Arkansas Racing Commission for the use and benefit of the State of Arkansas either ten percent (10%) of all moneys received each day from admissions paid by persons attending the races at the meeting or the sum of ten cents (10¢) on each and every paid admission, whichever sum is the greater.

(2) All payments provided in this section shall be made each day of any and every race meeting.

(b)(1) The issuance of all tax-free passes shall be by the franchise holder or its employees or agents. The commission shall have no authority over the issuance or distribution of the passes.

(2) It shall be unlawful for any person, corporation, firm, partnership, or any other entity to sell or offer for sale for any consideration any tax-free pass issued by the commission for general admission to the racing facility of any franchise holder.

(3) Any person, corporation, firm, partnership, or other entity that sells or offers for sale tax-free passes shall upon conviction be guilty of a Class B misdemeanor.

History. Acts 1957, No. 191, § 20; A.S.A. 1947, § 84-2835; Acts 1991, No. 664, § 2; 1991, No. 1020, § 2; 1999, No. 1508, §§ 11, 12; 2005, No. 1994, § 240.

CASE NOTES

Passes.

A tax free pass is simply a substitute for the price of admission and nothing more. Griffin v. Southland Racing Corp., 236 Ark. 872, 370 S.W.2d 429 (1963).

Track owner, in absence of civil rights issue, was entitled to exclude prospective patron from track because he thought such person to be undesirable even though such person held unrevoked pass from Racing Commission which had been given to him as a gift. Griffin v. Southland Racing Corp., 236 Ark. 872, 370 S.W.2d 429 (1963).

23-111-511. Record keeping by franchise holder — Audit.

(a) Every franchise holder conducting race meetings under this chapter shall keep its books and records so as to clearly show the true

number of admissions, the total amount of money contributed to each pari-mutuel pool on each race separately, and the amount of money received daily from admission fees.

(b) Within sixty (60) days after the conclusion of every race meeting, the franchise holder shall submit to the Arkansas Racing Commission a complete audit of the receipts and admissions.

History. Acts 1957, No. 191, § 21; A.S.A. 1947, § 84-2836.

23-111-512. Commission's access to meets, books, records, etc.

(a) The Arkansas Racing Commission shall at all times have access to any portion of the space or enclosure where a race meeting is held, including the space or enclosure where the pari-mutuel or certificate system of wagering is conducted or supervised at any racing meet, for the purpose of ascertaining whether or not the franchise holder is retaining only the commission provided in this chapter.

(b) The commission shall have full and free access to the books, records, machines, and papers pertaining to the pari-mutuel or certificate method of wagering, and admission tickets.

(c) The commission may also at any time investigate and ascertain whether or not any of the provisions of this chapter or the rules and regulations of the commission are being violated at the race track or enclosure.

History. Acts 1957, No. 191, § 23; A.S.A. 1947, § 84-2838.

23-111-513. Failure to pay tax.

(a) Any franchise holder failing or refusing to pay the amount found to be due the Arkansas Racing Commission from any tax provided for or imposed by this chapter shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000) in addition to the amount due from the franchise holder as provided in this chapter.

(b) All fines paid into any court of this state by a franchise holder found guilty of violating this section shall be paid over by the clerk of the court to the commission within ten (10) days after the fines shall have been paid to the clerk by the franchise holder.

History. Acts 1957, No. 191, § 22; A.S.A. 1947, § 84-2837; Acts 2005, No. 1994, § 158.

23-111-514. Franchise holder required to give bond.

Every franchise holder to which a license may be granted under this chapter at its own cost and expense shall, before the license is delivered, give a bond, in the penal sum of ten thousand dollars ($10,000) payable

to the Arkansas Racing Commission with a surety to be approved by the commission, conditioned to faithfully make the payments to the commission provided for in this chapter, and keep its books and records and make reports provided in this chapter and to conduct its race meeting in conformity with the provisions of this chapter.

History. Acts 1957, No. 191, § 22; A.S.A. 1947, § 84-2837.

23-111-515. Additional racing days for the benefit of small municipalities and community colleges.

(a)(1) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct six (6) additional days of racing during each twelve-month period.

(2) The additional days of racing may be divided between each of the two (2) racing meets allowed by this section, or all the additional days of racing may be added to a single racing meet as determined by the commission.

(3) In the event the additional days allowed by the commission fall upon a Saturday or Saturdays, then the franchise holder, at its option, may conduct daylight racing as authorized for a regular racing meet.

(b)(1) The franchise holder shall distribute the net proceeds, as defined in subdivision (b)(2) of this section, from the additional days of dog racing as follows:

(A) Twenty-five percent (25%) thereof shall be remitted at the end of each racing meet at which such additional days of racing are conducted to the various municipalities in the county where the dog racing meet is held which have a population of fewer than five thousand (5,000) inhabitants according to the most recent federal census, with each such municipality to receive an equal share of the funds; and

(B) Seventy-five percent (75%) of the proceeds shall be deposited with the Treasurer of State as special revenues and credited to an institution of higher education fund in the county in which the dog racing track is located. Such funds shall be considered local taxes for the purposes of § 6-61-601.

(2) Net proceeds derived from the additional days of dog racing shall be all revenue derived from the pari-mutuel wagering at the dog racing track during the additional days of racing, less the amount of the purses paid by the franchise holder.

(c) The commission shall establish appropriate rules and regulations to assure compliance with the provisions of this section and shall audit and verify all receipts and expenditures of the franchise holder in determining compliance with this section.

History. Acts 1993, No. 879, §§ 1, 2, 4, 5.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-4 and §§ 23-111-501 — 23-111-514 may not apply to this section which was enacted subse-

quently.

23-111-516. Health insurance.

From the amount withheld and retained by the dog racing franchise holder pursuant to § 23-111-509, the franchise holder shall set aside for the use and benefit of his or her employees for the purpose of maintaining health insurance benefits, one-half of one percent (0.5%) of all moneys wagered on live racing and on racing performances simultaneously televised by the franchise holder but conducted at another race track facility. This set-aside shall be in addition to any other credits or payments made by the dog racing franchise holder in accordance to law. Any surplus funds shall be carried forward the next calendar year and shall not be used for any other purposes. However, the amount set aside shall be applied only to the first one hundred twenty-five million dollars ($125,000,000) of the amount of moneys wagered per calendar year.

History. Acts 1999, No. 1585, § 1.
A.C.R.C. Notes. References to "this chapter" in subchapters 1-4 and §§ 23-111-501 — 23-111-514 may not apply to this section which was enacted subsequently.

23-111-517. Disposition of pari-mutuel tax revenue.

(a) Each year, the first eighty-five thousand dollars ($85,000) of the pari-mutuel tax revenue derived from § 23-111-505(a) shall be remitted directly to Mid-South Community College and shall be used by the college for facilities, programming, and personnel in the support of a nursing program.

(b) The revenue received by the college under this section shall be considered local taxes for the purposes of § 6-61-601.

History. Acts 2001, No. 1488, § 1.
A.C.R.C. Notes. References to "this chapter" in subchapters 1-4 and §§ 23-111-501 — 23-111-514 may not apply to this section, which was enacted subsequently.

CHAPTER 112

ARKANSAS MOTOR VEHICLE COMMISSION ACT

SUBCHAPTER.

1. General Provisions.
2. Arkansas Motor Vehicle Commission.
3. Licensing and Regulation.
4. Unlawful Practices.
5. Hearings and Appeals.
6. Used Motor Vehicle Buyers Protection.
7. Damage to Motor Vehicles While in Transit.
8. Special Motorcycle Events.
9. Recreational Vehicle Special Events.
10. Recreational Vehicle Franchise Act.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-5 may not apply to subchapters 6 and 7 which were enacted subsequently.

Effective Dates. Acts 1975, No. 388, § 13: July 1, 1975.

RESEARCH REFERENCES

Am. Jur. 7A Am. Jur. 2d, Auto., § 150 et seq.

Subchapter 1 — General Provisions

SECTION.
23-112-101. Title.
23-112-102. Legislative findings — Purpose.
23-112-103. Definitions.
23-112-104. Injunction.
23-112-105. Civil damages.
23-112-106. Enforcement.
23-112-107. Motor vehicle event data recorder — Data ownership.

A.C.R.C. Notes. Acts 2014, No. 137, § 3, provided: "CONSUMER PROTECTION. Protecting the consumer is a critical purpose of the Arkansas Motor Vehicle Commission. Therefore, of the total amount appropriated under Section 2 of this Act for the operating expenses of the Arkansas Motor Vehicle Commission, seventeen thousand five hundred dollars ($17,500) each fiscal year shall be allocated to consumer protection efforts. The Arkansas Motor Vehicle Commission will submit quarterly a written report to Arkansas Legislative Council on their Consumer Protection efforts.

"The Arkansas Motor Vehicle Commission will continue to develop additional programs and procedures that will expand consumer protection efforts.

"The provisions of this section shall be in effect only from July 1, 2014 through June 30, 2015."

Effective Dates. Acts 1977, No. 838, § 3: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission does not presently have adequate authority to compel compliance with the Arkansas Motor Vehicle Commission Act and Commission rules and regulations and that authority to seek injunctive relief against violations of the Act is necessary to the accomplishment of the Commission's statutory responsibility to license and regulate the new motor vehicle industry in this State. Therefore, an emergency is found to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall take effect upon the date of its passage."

Identical Acts 1985, Nos. 1032 and 1058, § 9: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that neither the Arkansas Motor Vehicle Commission nor other board or commission presently have power to license and regulate dealers, salesmen, wholesalers who deal in used motor vehicles, motor vehicles lessors or auto auctions and that authority to regulate the aforesaid functions of the motor vehicle industry is necessary to prevent and remedy public injury in motor vehicle transactions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 620, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that motor vehicles with less than four wheels should be licensed beginning July 1, 1987, and that such licenses should expire December 31 of each year

unless the Revenue Commissioner provides to the contrary by regulation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 65, § 11: Feb. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission Act does not adequately regulate the actions of certain importers and others who purchase motor vehicles for sale to distributors and that such regulations are needed to protect distributors and the public from unfair, discriminatory and coercive practices. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 678, § 7: Mar. 20, 1989. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that there is some question as to the ability of new car dealers in this state to meet the special order needs of their customers and therefore the availability and authority clarified and granted in this act is immediately necessary for the protection and preservation of the health, safety, and welfare of the people. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 383, § 9: Mar. 8, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to recent resignations of members, the Motor Vehicle Commission is unable to perform the duties assigned to it by law; that the consumer has not been adequately represented on the Commission; and that the changes in the membership and procedures of the Commission provided for in this Act are necessary to prevent injury to the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 568, § 1: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain license fees charged by the Arkansas Motor Vehicle Commission need to be increased; that some of these fees are due on July 1 of each year; that unless this act is effective on July 1, 1995 those fees will not be increased; and that for the effective administration of this act an effective date of July 1, 1995 is necessary. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 1995."

Acts 1999, No. 1042, § 16: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of this act are of essential importance to correct the persistent unfair treatment of dealers by manufacturers of the same line, in matters such as manufacturers' systematic denial of dealers' warranty and recall claims, manufacturers' offering certain models to their franchised dealers on an arbitrary and unfair basis; that this act is essential to protect the stability and viability of these business owners in this state and the ability of consumers to purchase automobiles without undue interference from manufacturers; and other similar matters. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this

act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

CASE NOTES

Applicability.

The Motor Vehicle Act does not cover automobile dealer franchise agreements executed before its effective date. Chrysler Motors Corp. v. Thomas Auto Co., 939 F.2d 538 (8th Cir. 1991).

Where the Motor Vehicle Act impinged upon plaintiff's existing rights and imposed new duties upon plaintiff, applying the Act to the termination of its dealer agreement with defendant would constitute an impermissible retroactive application of the Act. Chrysler Motors Corp. v. Thomas Auto Co., 939 F.2d 538 (8th Cir. 1991).

23-112-101. Title.

This chapter shall be known and may be cited as the "Arkansas Motor Vehicle Commission Act".

History. Acts 1975, No. 388, § 1; A.S.A. 1947, § 75-2301.

CASE NOTES

Applicability.

Where a truck dealer and franchisee asserted that a truck manufacturer and franchisor granted greater price concessions to the dealer's competitors, the dealer was not limited to the remedies provided by the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., and could pursue remedies under the Arkansas Franchise Practices Act, § 4-72-201 et seq. Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004), rev'd, Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc., 546 U.S. 164 (2006).

Cited: Arkansas Motor Vehicle Comm'n v. Cliff Peck Chevrolet, Inc., 277 Ark. 185, 640 S.W.2d 453 (1982); Hankins v. McElroy, 313 Ark. 394, 855 S.W.2d 310 (1993).

23-112-102. Legislative findings — Purpose.

(a) The General Assembly finds and declares that the distribution and sale of motor vehicles in Arkansas vitally affects the general economy of the state and the public interest and the public welfare.

(b) The General Assembly further finds and declares that it is necessary, in the exercise of its police power, to regulate and to license motor vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, new motor vehicle dealers, and salespersons doing business in Arkansas in order to:

(1) Prevent frauds, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;

(2) Avoid undue control of the independent motor vehicle dealer by motor vehicle manufacturing and distributing organizations;

(3) Foster and keep alive vigorous and healthy competition;

(4) Prevent the creation or perpetuation of monopolies;

(5) Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a motor vehicle dealer or the ultimate purchaser;

(6) Prevent false and misleading advertising;

(7) Promote and keep alive a sound system of distribution of motor vehicles to the public; and

(8) Promote the public safety and welfare.

History. Acts 1975, No. 388, § 2; A.S.A. 1947, § 75-2302; Acts 1995, No. 568, § 1.

CASE NOTES

Cited: Arkansas Motor Vehicle Comm'n v. Cliff Peck Chevrolet, Inc., 277 Ark. 185, 640 S.W.2d 453 (1982).

23-112-103. Definitions.

As used in this chapter:

(1) "Advertisement" means an oral, written, telecommunicated, graphic, pictorial, or other statement made in the course of soliciting business, including without limitation, a statement or representation made in a newspaper, magazine, Internet, or other publication or contained in a notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made via radio, television, or any other medium;

(2) "All-terrain vehicle" means a motor vehicle that:

(A) Is an off-highway vehicle:

(i) Fifty inches (50″) or less in width, having a dry weight of eight hundred pounds (800 lbs.) or less, and traveling on three (3) or more low-pressure tires, with a seat designed to be straddled by the operator, a Class 1 all-terrain vehicle; or

(ii) With a width that exceeds fifty inches (50″) or having a dry weight that exceeds eight hundred pounds (800 lbs.), traveling on four (4) or more low-profile, low-pressure tires, and having a bench seat, a Class 2 all-terrain vehicle;

(B) Has a seat for the operator and any passenger and handlebars or other steering mechanism for control; and

(C) Is used for any purpose, including, but not limited to, off-road, amphibious, or recreational travel;

(3) "Auto auction" means:

(A) Any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers;

(B) Any motor vehicle dealer licensed to sell used motor vehicles, selling motor vehicles using an auction format but not on consignment; and

(C) Any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(4) "Branch location" means a secondary location:

(A) Identified in a license issued by the Arkansas Motor Vehicle Commission to a motor vehicle dealer; and

(B) Which is an established place of business other than the licensed location;

(5) "Broker" means a person who for any valuable consideration, whether received directly or indirectly, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) A dealer or bona fide employee of a new motor vehicle dealer when acting on behalf of a new motor vehicle dealer;

(B) A representative or bona fide employee of a manufacturer, factory branch, or factory representative when acting on behalf of a manufacturer, factory branch, or factory representative;

(C) A representative or bona fide employee of a distributor or distributor branch when acting on behalf of a distributor or distributor branch; or

(D) At any point in the transaction, the bona fide owner of the vehicle involved in the transaction;

(6)(A) "Coerce" means compelling or attempting to compel by threatening, retaliating, using economic force, or by not performing or complying with:

(i) Any terms or provisions of the franchise or sales and service agreement;

(ii) The terms of this chapter; or

(iii) The rules promulgated by the Arkansas Motor Vehicle Commission.

(B) "Coerce" does not mean recommending, exposing, persuading, urging, or arguing;

(7) "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;

(8) "Conversion" means a motor vehicle other than an exempted specialty vehicle that is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and that has not been the subject of a retail sale;

(9) "Distributor" means any person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives;

(10) "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;

(11) "Distributor representative" means a representative similarly employed by a distributor or distributor branch;

(12) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

(13) "Factory representative" means a representative employed by a:

(A) Person, firm, association, corporation, or trust that manufactures or assembles new motor vehicles; or

(B) Factory branch, for the purpose of making or promoting the sale of its new motor vehicles or for supervising or contacting its dealers or prospective dealers;

(14) "Franchise" means one (1) or more contracts between a franchised dealer as franchisee and either a manufacturer or a distributor, importer, second-stage manufacturer, or converter as franchiser under which:

(A) The franchisee is granted the right to sell, service, or sell and service new motor vehicles manufactured or distributed by the franchiser;

(B) The franchisee as an independent business is a component of the franchiser's distribution system;

(C) The franchise is substantially associated with the franchiser's trademark, trade name, or commercial symbol;

(D) The franchisee's business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or

(E)(i) Any right, duty, or obligation granted or imposed by this chapter is affected.

(ii) "Franchise" includes a written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee;

(15) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party;

(16) "Licensed location" means the address designated as the primary business address of the motor vehicle dealer on the application submitted for approval of licensure;

(17) "Line make of a motor vehicle" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo;

(18) "Low speed vehicle" means a motor vehicle:

(A) That is four (4) wheeled;

(B) Whose speed attainable in one (1) mile is more than twenty miles per hour (20 m.p.h.) and not more than twenty-five miles per hour (25 m.p.h.) on a paved level surface; and

(C) With a gross vehicle weight of less than three thousand pounds (3,000 lbs.);

(19) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new motor vehicles;

(20) "Motor vehicle" means a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and low speed vehicles;

(21)(A)(i) "Motor vehicle dealer" means a person that is:

(a) Engaged in the business of selling, offering to sell, soliciting, or advertising the sale of servicing or repairing motor vehicles under a manufacturer's warranty; and

(b) Located at an established and permanent place of business under a franchise, sales and service agreement, or a bona fide contract in effect with a manufacturer or distributor.

(ii) "Motor vehicle dealer" includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other multipassenger motor vehicles, or possessing them for the purpose of resale.

(B) "Motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree, or order of any court;

(ii) Public officers while performing their duties as officers;

(iii) Employees of persons, corporations, or associations enumerated in subdivision (21)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

(v) Financial institutions engaged in the leasing of motor vehicles; or

(vi) Used motor vehicle dealers licensed by the state under § 23-112-601 et seq.;

(22) "Motor vehicle lessor" means any person not excluded by subdivision (21) of this section engaged in the motor vehicle leasing or rental business;

(23) "Motor vehicle salesperson" means any person who:

(A) Is employed as a salesperson by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles;

(B) For compensation of any kind, acts as a salesperson, agent, or representative of a motor vehicle dealer;

(C) Attempts to or in fact negotiates a sale of a motor vehicle owned partially or entirely by a motor vehicle dealer; and

(D) Uses the financial resources, line of credit, or floor plan of a motor vehicle dealer to purchase, sell, or exchange any interest in a motor vehicle;

(24) "New motor vehicle" means any motor vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or franchised new motor vehicle dealer to an ultimate purchaser;

(25) "Off premises" means a location other than the address designated as the licensed location;

(26) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;

(27)(A) "Relevant market area" means the area within a radius surrounding an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater.

(B)(i) For all licensed new motor vehicle dealers, excluding motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall be a radius of twenty (20) miles.

(ii) However, when a manufacturer is seeking to establish an additional new motor vehicle dealer, the relevant market area shall in all instances be the area within a radius of ten (10) miles around an existing dealer.

(C) For all licensed new motor vehicle dealers of motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall in all instances be the area within a radius of thirty (30) miles around an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater;

(28) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer;

(29) "Second-stage manufacturer" or "converter" means a person, firm, or corporation that, prior to retail sale of a motor vehicle:

(A) Assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) Substantially adds to, subtracts from, or modifies a previously assembled or manufactured motor vehicle;

(30)(A) "Specialty vehicle" means a motor vehicle manufactured by a second-stage manufacturer by purchasing motor vehicle components, for example, frame and drive train, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public.

(B) "Specialty vehicle" includes garbage trucks, ambulances, fire trucks, limousines, hearses, and other similar limited-purpose vehicles as the commission may by regulation provide;

(31) "Temporary permit" means a license issued for one (1) week or less to a motor vehicle dealer who is licensed in another state for the

purpose of displaying, offering to sell, selling, and soliciting the sales of motor vehicles at the time and place designated by the commission and only at an approved motor vehicle show in this state;

(32)(A) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his or her capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale.

(B) "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(33)(A) "Used motor vehicle" means a motor vehicle:

(i) For which title has been sold, bargained, exchanged, given away, or transferred from the person or corporation who first took ownership from the manufacturer, distributor, dealer, or agents thereof; or

(ii) So used as to have become what is commonly known as a "second hand motor vehicle" or a "previously owned motor vehicle".

(B) A new motor vehicle shall not be considered a used motor vehicle unless the motor vehicle has been:

(i) Placed in actual operation; and

(ii) Not held for resale by an owner that has:

(a) Been granted a certificate of title; and

(b) Registered the motor vehicle under the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, § 27-14-101 et seq.;

(34) "Used motor vehicle dealer" means any person, wholesaler, or auto auctioneer who, for a commission or with the intent to make a profit or gain of money or other thing of value:

(A) Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or

(B) Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person; and

(35)(A) "Wholesaler" means any person, resident or nonresident, not excluded by subdivision (21) of this section, who, in whole or in part, sells used motor vehicles to motor vehicle dealers or purchases used vehicles for the purpose of resale.

(B) However, motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of the incidental sales.

History. Acts 1975, No. 388, § 3; 1985, No. 1032, § 1; 1985, No. 1058, § 1; A.S.A. 1947, § 75-2303; Acts 1987, No. 620, § 1; 1987, No. 645, §§ 1, 2; 1989, No. 65, §§ 1-3; 1989, No. 509, § 1; 1991, No. 411, § 3; 1991, No. 890, §§ 1-3; 1993, No. 383, § 5; 1997, No. 1154, §§ 3-7; 1999, No. 1042, § 1; 2001, No. 1053, § 1; 2003, No. 1098, §§ 1, 2; 2009, No. 756, §§ 1-5; 2011, No. 1005, §§ 1-3; 2013, No. 561, §§ 1, 2; 2013, No. 1043, §§ 1, 2.

Amendments. The 2009 amendment substituted "exempted specialty vehicle" for "ambulance or firefighting vehicle" in

(8); rewrote (18), (19)(A)(i), and (31); added (34) and (35); and made related and minor stylistic changes.

The 2011 amendment rewrote (6); inserted "or sell and service" preceding "new motor" in (14)(A); and deleted "and there is one (1) or more existing new motor vehicle dealers of the same line make within a ten-mile radius of the proposed dealer site" preceding "the relevant" in (25)(B)(ii).

The 2013 amendment by No. 561 substituted "motor homes, and low speed vehicles" for "and motor homes" in (18); and added present (35).

The 2013 amendment by No. 1043 deleted "motor homes" from the end of (18); and deleted (34)(B) and former (35).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Contracts, 12 U. Ark. Little Rock L.J. 611.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, All-Terrain Vehicles, 26 U. Ark. Little Rock L. Rev. 483.

CASE NOTES

Motor Vehicles.

School buses are "motor vehicles" within the meaning of subdivision (1). Walt Bennett Ford, Inc. v. Pulaski County Special Sch. Dist., 274 Ark. 208, 624 S.W.2d 426 (1981).

Cited: Arkansas Motor Vehicle Comm'n v. Cantrell Marine, Inc., 305 Ark. 449, 808 S.W.2d 765 (1991).

23-112-104. Injunction.

(a) The Arkansas Motor Vehicle Commission shall be entitled to seek an injunction upon affidavit in the circuit court for the county in which the commission's office is located to prevent any person, firm, partnership, association, corporation, or legal entity from violating any provision of this chapter or any rule or regulation promulgated by the commission.

(b) The commission shall not be required to execute or give bond for costs, indemnity, or stay or to give security as a condition to the issuance of a restraining order or injunction, either temporary or permanent.

History. Acts 1977, No. 838, § 1; A.S.A. 1947, § 75-2312; Acts 1997, No. 1154, § 8.

Cross References. Injunctions, procedure, § 16-113-301 et seq.

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-105. Civil damages.

(a) A licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with this chapter, other than a new automobile or truck dealer's failure to comply with § 23-112-301(d)(1) and (2) or with any rule or regulation promulgated by the Arkansas Motor Vehicle Commission under authority vested in it by this chapter, may recover reasonable damages and attorney's fees therefor in any court of competent jurisdiction.

(b) If a motor vehicle dealer prevails in an action against a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division under any provision of this chapter, the motor vehicle dealer shall also have a cause of action against the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division for attorney's fees, if none have been awarded in an earlier administrative hearing.

History. Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3; 2011, No. 1005, § 4; 2013, No. 1043, § 3.

Amendments. The 2011 amendment added the (a) designation; deleted "any provision of" following "comply with" in (a); and added (b).

The 2013 amendment deleted "Except as provided under subdivision (b)(2) of this section" in (b) and deleted (b)(2).

23-112-106. Enforcement.

(a) The Arkansas Motor Vehicle Commission may enter orders that direct and command compliance with this chapter and regulations under this chapter if any of the following conditions have been met:

(1) The commission has conducted a hearing within sixty (60) days on the matter;

(2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or

(3) The commission finds that the current civil or administrative penalties are insufficient.

(b) The commission may enforce its findings and conclusions upon entry of an order under subsection (a) of this section.

History. Acts 2003 (2nd Ex. Sess.), No. 62, § 1.

23-112-107. Motor vehicle event data recorder — Data ownership.

(a) As used in this section:

(1) "Authorized representative" means a person who is the attorney-in-fact for an owner or a person who has been appointed the administrator or personal representative of the estate of the owner;

(2) "Motor vehicle event data recorder" means a factory-installed feature in a motor vehicle that does one (1) or more of the following:

(A) Records, stores, transmits, or dispenses any of the following information for the purpose of retrieval after a crash:

(i) Vehicle speed;

(ii) Vehicle direction;

(iii) Vehicle location;

(iv) Steering performance; or

(v) Seat belt restraint status;

(B) Has the capacity to transmit information concerning a crash in which the motor vehicle has been involved to a central communications system when a crash occurs; or

(C) Includes a sensing and diagnostic module, restraint control module, electronic throttle control, or other similar component; and

(3) "Owner" means a person or entity:

(A) In whose name a motor vehicle is registered or titled;

(B) Who leases a motor vehicle for at least three (3) months;

(C) Who is entitled to possession of the motor vehicle as the purchaser under a security agreement; or

(D) Who is the authorized representative of the owner.

(b) At the time of a new vehicle purchase by a consumer from a dealership, an owner of a motor vehicle shall be given written notice by the seller or manufacturer that includes the following:

(1) The presence of the motor vehicle event data recorder in the motor vehicle;

(2) The type of motor vehicle event data recorder in the motor vehicle; and

(3) The type of data that is recorded, stored, or transmitted on the motor vehicle event data recorder.

(c) Except as specifically provided under subsection (d) of this section and subsections (f)-(i) of this section, the data on a motor vehicle event data recorder:

(1) Is private;

(2) Is exclusively owned by the owner of the motor vehicle; and

(3) Shall not be retrieved or used by another person or entity.

(d)(1) If a motor vehicle is owned by one (1) owner, then the owner of a motor vehicle may provide written consent in the form of a release signed by the owner that authorizes a person or entity to retrieve or use the data.

(2) If a motor vehicle is owned by more than one (1) person or entity and if all owners agree to release the data, then all owners must consent in writing by signing a release to authorize a person or entity to retrieve or use the data.

(3) A release to a person or entity under this subsection shall be limited to permission for data collection and compilation only and shall not authorize the release of information that identifies the owner of the vehicle.

(e)(1)(A) If a motor vehicle is equipped with a motor vehicle event data recorder and is involved in an accident in Arkansas, the owner of the motor vehicle at the time that the data is created shall own and retain exclusive ownership rights to the data.

(B) The ownership of the data shall not pass to a lienholder or to an insurer because the lienholder or insurer succeeds in ownership to the vehicle as a result of the accident.

(2) The data shall not be used by a lienholder or an insurer for any reason without a written consent in the form of a release signed by the owner of the motor vehicle at the time of the accident that authorizes the lienholder or insurer to retrieve or use the data.

(3) A lienholder or insurer shall not make the owner's consent to the retrieval or use of the data conditioned upon the payment or settlement of an obligation or claim. However, the insured is required to comply with all policy provisions, including any provision that requires the insured to cooperate with the insurer.

(4) An insurer or lessor of a motor vehicle shall not require an owner to provide written permission for the access or retrieval of information from a motor vehicle event data recorder as a condition of the policy or lease.

(f) Except as specifically provided under subsection (d) of this section and subsections (g)-(i) of this section, the data from a motor vehicle event data recorder shall only be produced without the consent of the owner at the time of the accident if:

(1) A court of competent jurisdiction in Arkansas orders the production of the data;

(2) A law enforcement officer obtains the data based on probable cause of an offense under the laws of the State of Arkansas; or

(3) A law enforcement officer, a firefighter, or an emergency medical services provider obtains the data in the course of responding to or investigating an emergency involving physical injury or the risk of physical injury to any person.

(g) The Arkansas State Highway and Transportation Department may retrieve data from a motor vehicle event data recorder if the data is used for the following purposes:

(1) Preclearing weigh stations;

(2) Automating driver records of duty status as authorized by the Department of Transportation;

(3) Replacing handwritten reports for any fuel tax reporting or other mileage reporting purpose; or

(4) Complying with a state or federal law.

(h) To protect the public health, welfare, and safety, the following exceptions shall be allowed regarding the retrieval of data from a motor vehicle event data recorder:

(1) To determine the need or to facilitate emergency medical care for the driver or passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency, including obtaining data from a company that provides subscription services to the owners of motor vehicles for in-vehicle safety and security communications systems;

(2) To facilitate medical research of the human body's reaction to motor vehicle crashes if:

(A) The identity of the owner or driver is not disclosed in connection with the retrieved data; and

(B) The last four (4) digits of the vehicle identification number are not disclosed; or

(3) To diagnose, service, or repair a motor vehicle.

(i) Notwithstanding any other provision of this section, the use of data from a motor vehicle event data recorder shall not be permitted into evidence in a civil or criminal matter pending before a court in the State of Arkansas unless it is shown to be relevant and reliable pursuant to the Arkansas Rules of Evidence.

(j)(1) If a motor vehicle is equipped with a motor vehicle event data recorder that is capable of recording, storing, transmitting, or dispensing information as described in this section and that capability is part of a subscription service, then the information that may be recorded, stored, transmitted, or dispensed shall be disclosed in the subscription agreement.

(2) Subsections (c) and (d) of this section and subsections (f)-(h) of this section shall not apply to subscription services that meet the requirements of this subsection.

(k)(1) A new motor vehicle dealer, manufacturer, and distributor shall be immune and held harmless against liability for the privacy of information contained in motor vehicle databases, including without limitation recording devices, global-positioning systems, navigation devices, or any in-vehicle data not controlled by the dealer.

(2) This subsection does not affect the notice requirements under subsection (b) of this section.

(l) The Arkansas Motor Vehicle Commission shall administer this section and may promulgate rules for the administration of this section.

History. Acts 2005, No. 1419, § 1; 2009, No. 148, § 1; 2011, No. 1005, §§ 5, 6.

A.C.R.C. Notes. This section was formerly codified as § 27-37-103.

Acts 2009, No. 148, § 2, provided: "For administrative convenience, the Arkansas Code Revision Commission shall remove Arkansas Code § 27-37-103 including the amendment made in this act from Title 27 and recodify the provision under the 'Arkansas Motor Vehicle Commission Act', Arkansas Code § 23-112-101 et seq."

Amendments. The 2009 amendment added (k).

The 2011 amendment inserted present (k) and redesignated former (k) as (l).

Subchapter 2 — Arkansas Motor Vehicle Commission

SECTION.
23-112-201. Arkansas Motor Vehicle Commission — Creation — Members — Officers.
23-112-202. Proceedings — Bond.
23-112-203. Executive director — Employees — Office.
23-112-204. Rules and regulations.
23-112-205. Disposition of funds.
23-112-206. [Repealed.]

Effective Dates. Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Act 113 of 1977, exist for the singular purpose

of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansas; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1983, Nos. 131 and 135, § 6: Feb. 10, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 747, § 3: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the members of the Motor Vehicle Commission receive an inadequate amount of per diem which has not changed since 1975; that the per diem allowance should be increased to a reasonable level; and that the Commission members will not receive adequate per diem until this Act becomes effective. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1985, Nos. 1032 and 1058, § 9: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that neither the Arkansas Motor Vehicle Commission nor other board or commission presently have power to license and regulate dealers, salesmen, wholesalers who deal in used motor vehicles, motor vehicles lessors or auto auctions and that authority to regulate the aforesaid functions of the motor vehicle industry is necessary to prevent and remedy public injury in motor vehicle transactions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 169, § 9: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 383, § 9: Mar. 8, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to recent resignations of members, the Motor Vehicle Commission is unable to perform the duties assigned to it by law; that the consumer has not been adequately represented on the Commission; and that the changes in the membership and procedures of the Commission provided for in this Act are necessary to prevent injury to the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 568, § 1: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain license fees charged

by the Arkansas Motor Vehicle Commission need to be increased; that some of these fees are due on July 1 of each year; that unless this act is effective on July 1, 1995 those fees will not be increased; and that for the effective administration of this act an effective date of July 1, 1995 is necessary. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governer. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 2311, § 7: July 1, 2005, except § 4, effective Apr. 14, 2005. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2005 is essential to the operation of the agency for which the appropriations in this Act are provided; with the exception that Section 4 in this Act shall be in full force and effect from and after the date of its passage and approval, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2005, with the exception that Section 4 in this Act shall be in full force and effect from and after the date of its passage and approval, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2005; with the exception that Section 4 in this Act shall be in full force and effect from and after the date of its passage and approval."

Acts 2007, No. 530, § 10: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

23-112-201. Arkansas Motor Vehicle Commission — Creation — Members — Officers.

(a) There is created the Arkansas Motor Vehicle Commission, hereinafter referred to as the "commission", to be composed of nine (9) members to be appointed by the Governor for terms of seven (7) years, subject to confirmation by the Senate.

(b)(1) One (1) commissioner shall be appointed from each of the four (4) congressional districts of the state as constituted July 1, 1975, and

five (5) members of the commission, including the consumer representative and the representative of the elderly, shall be appointed from the state at large.

(2)(A) Four (4) members of the commission shall be licensees or shall be qualified as licensees under the provisions of this chapter at the time of their appointment.

(B) Five (5) members of the commission shall be appointed from the public at large, including the consumer representative and the representative of the elderly.

(C)(i) No more than four (4) members of the commission shall at any time:

(a) Be licensees under this chapter;

(b) Have any financial interest in or be an officer or an employee of a licensee under this chapter; or

(c) Be employed by or own a business or organization that directly or indirectly profits from the sale of new motor vehicles.

(ii) At least one (1) of the members shall be licensed as a dealer of franchise motorcycles.

(3)(A) The consumer representative and the representative of the elderly shall not be actively engaged in or retired from the businesses regulated by this chapter.

(B) The two (2) positions may not be held by the same person.

(C) Both shall be full voting members.

(D) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be employed by or own any business or organization that directly or indirectly profits from the sale of new motor vehicles; and

(iii) Only have experiences with the sale of a new motor vehicle as a consumer.

(E) The consumer representative shall:

(i) Not be employed by or own any business or organization that directly or indirectly profits from the sale of new motor vehicles; and

(ii) Only have experiences with the sale of a new motor vehicle as a consumer.

(4) Each of the members appointed shall be a citizen of the United States, a resident of the State of Arkansas, and a qualified elector of the jurisdiction from which appointed, and each shall be of good moral character.

(c) In the event a vacancy on the commission occurs due to death, resignation, or other reason, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor, subject to confirmation by the Senate, of a person meeting the same qualifications required for the initial appointment.

(d) Each commission member shall serve until his or her successor is appointed and qualified.

(e) The commission shall select by majority vote of its members one (1) of its members as chair, one (1) as vice chair, and one (1) as secretary.

(f)(1) The Chair of the Arkansas Motor Vehicle Commission and members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The chair shall require itemized statements of all reimbursable expenses and shall audit the statements or cause them to be audited before approving them for payment.

History. Acts 1975, No. 388, § 4; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 747, § 1; 1985, No. 1032, § 2; 1985, No. 1058, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 75-2304; Acts 1989 (1st Ex. Sess.), No. 169, § 6; 1993, No. 383, § 1; 1997, No. 250, § 227; 2005, No. 2311, § 3.

Publisher's Notes. The terms of the members of the Arkansas Motor Vehicle Commission are arranged so that one (1) term expires on January 14 of every year.

23-112-202. Proceedings — Bond.

(a) The Arkansas Motor Vehicle Commission shall meet at Little Rock and complete its organization immediately after the entire membership thereof has been appointed and has qualified.

(b) Before entering upon the discharge of the duties of his or her office, the Chair of the Arkansas Motor Vehicle Commission and each member of the commission shall take and subscribe to the oath of office prescribed by the Arkansas Constitution and shall file this oath in the office of the Secretary of State.

(c)(1) The commission shall purchase either a blanket position honesty or faithful performance bond from some surety company authorized to do business in this state. This bond shall be in the penal sum of ten thousand dollars ($10,000), made payable to the State of Arkansas, conditioned for the honest and faithful performance of the duties of the chair and each member of the commission, the Executive Director of the Arkansas Motor Vehicle Commission, and all other employees of the commission, the bond to be approved by the Governor and filed in the office of the Secretary of State.

(2) The commission shall keep the bond in force at all times from and after the date the commission is organized.

(d) A majority of the commission shall constitute a quorum for the transaction of any business.

(e) The commission shall adopt and use a common seal for the authentication of its records and orders.

(f) The commission shall hold all of its regular monthly meetings in its office at Little Rock, but upon approval of a majority of its members, may hold special meetings and the hearings provided for under §§ 23-112-501 — 23-112-509 at any time and place within the State of Arkansas.

History. Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 1993, No. 383, § 2; 1995, No. 568, § 2.

A.C.R.C. Notes. The operation of subsection (c) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials, and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subsection (c) may again become effective upon cessa-

tion of coverage under that program. See § 21-2-703.

23-112-203. Executive director — Employees — Office.

(a)(1) The Arkansas Motor Vehicle Commission shall appoint a qualified person to serve as executive director thereof, to serve at the pleasure of the commission, and shall fix his or her salary and shall define and prescribe the duties.

(2) The Executive Director of the Arkansas Motor Vehicle Commission shall be in charge of the commission's office and shall devote such time to the duties thereof as may be necessary.

(3) The duties shall include, but shall not be limited to, the collection of all fees and charges under the provisions of this chapter, keeping a record of all proceedings of the commission, and keeping an accurate account of all moneys received and disbursed by the commission, all of which records shall be considered as public records.

(b) The commission may employ such clerical and professional help and incur such expenses as may be reasonably necessary for the proper discharge of its duties under this chapter.

(c) Except as provided in this chapter, the commission shall maintain its office and transact its business at Little Rock.

History. Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 1995, No. 568, § 3.

23-112-204. Rules and regulations.

The Arkansas Motor Vehicle Commission shall have power to prescribe, issue, amend, and rescind, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter.

History. Acts 1975, No. 388, § 4; 1985, No. 1032, § 2; 1985, No. 1058, § 2; A.S.A. 1947, § 75-2304.

23-112-205. Disposition of funds.

(a) All funds received by the Arkansas Motor Vehicle Commission shall be deposited into the State Treasury as special revenues to the credit of a special fund to be known as the "Motor Vehicle Commission Fund".

(b) All expenses incurred in the organization, maintenance, operation, and motor vehicle education and training of the commission shall be paid from the special fund, and the expenditure of all funds shall be subject to the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the Arkansas Procurement Law, § 19-11-201 et seq., and other applicable fiscal laws.

(c) The receipts and disbursements of the commission shall be audited annually by the Legislative Auditor.

History. Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 2007, No. 530, § 6.

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-206. [Repealed.]

Publisher's Notes. This section, concerning fund transfer, motor vehicle education and training, was repealed by Acts 2013, No. 561, § 3. The section was derived from Acts 2007, No. 530, § 5.

Subchapter 3 — Licensing and Regulation

SECTION.

23-112-301. License required.
23-112-302. Application for license.
23-112-303. Application fees.
23-112-304. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, distributors, etc.
23-112-305. Display of license — Change of employer — Factory representative and distributor representative.
23-112-306. Display of license — Change of employer — Salesperson.
23-112-307. Expiration of license.
23-112-308. Denial, revocation, and suspension.
23-112-309. Monetary penalty in lieu of suspension or revocation of license.
23-112-310. Delivery, preparation, and warranty obligations.
23-112-311. Addition or relocation of new motor vehicle dealer.
23-112-312. License reciprocity with other states.
23-112-313. Warranty agreements.
23-112-314. Civil penalty.
23-112-315. [Repealed.]
23-112-316. Delivery prior to sale — Disclosures.
23-112-317. Motor vehicle dealer service and handling fees.
23-112-318. Negative equity financing and disclosures permitted.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-5 may not apply to subchapters 6 and 7 which were enacted subsequently.

Effective Dates. Acts 1977, No. 838, § 3: approved Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission does not presently have adequate authority to compel compliance with the Arkansas Motor Vehicle Commission Act and Commission rules and regulations and that authority to seek injunctive relief against violations of the Act is necessary to the accomplishment of the Commission's statutory responsibility to license and regulate the new motor vehicle industry in this State. Therefore, an emergency is found to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall take effect upon the date of its passage."

Identical Acts 1985, Nos. 1032 and 1058, § 9: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that neither the Arkansas Motor Vehicle Commission nor other board or commission presently have power to license and regulate dealers, salesmen, wholesalers who deal in used motor vehicles, motor ve-

hicles lessors or auto auctions and that authority to regulate the aforesaid functions of the motor vehicle industry is necessary to prevent and remedy public injury in motor vehicle transactions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 620, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that motor vehicles with less than four wheels should be licensed beginning July 1, 1987, and that such licenses should expire December 31 of each year unless the Revenue Commissioner provides to the contrary by regulation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 678, § 7: Mar. 20, 1989. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that there is some question as to the ability of new car dealers in this state to meet the special order needs of their customers and therefore the availability and authority clarified and granted in this act is immediately necessary for the protection and preservation of the health, safety, and welfare of the people. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 383, § 9: Mar. 8, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to recent resignations of members, the Motor Vehicle Commission is unable to perform the duties assigned to it by law; that the consumer has not been adequately represented on the Commission; and that the changes in the membership and procedures of the Commission provided for in this Act are necessary to prevent injury to the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 568, § 1: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain license fees charged by the Arkansas Motor Vehicle Commission need to be increased; that some of these fees are due on July 1 of each year; that unless this act is effective on July 1, 1995 those fees will not be increased; and that for the effective administration of this act an effective date of July 1, 1995 is necessary. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 1995."

Acts 1999, No. 1042, § 16: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of this act are of essential importance to correct the persistent unfair treatment of dealers by manufacturers of the same line, in matters such as manufacturers' systematic denial of dealers' warranty and recall claims, manufacturers' offering certain models to their franchised dealers on an arbitrary and unfair basis; that this act is essential to protect the stability and viability of these business owners in this state and the ability of consumers to purchase automobiles without undue interference from manufacturers; and other similar matters. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 366, § 5: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that currently a lawsuit is challenging the charging of documentary fees motor vehicle dealers as part of the sale of a motor vehicle; that the circuit court has found that the documentary fee which is a fee charged for the

preparation of documents by the motor vehicle dealer is the unauthorized practice of law; and that this act is immediately necessary to prevent the ongoing problem and to prohibit motor vehicle dealers from charging documentary fees. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-301. License required.

(a) Notwithstanding any other statute, the following acts are declared to be unlawful:

(1) The violation of any of the provisions of this chapter; and

(2) For any person to engage in business as, serve in the capacity of, or act as a new motor vehicle dealer, motor vehicle salesperson, motor vehicle lessor, manufacturer, importer, distributor, factory branch or division, distributor branch or division, factory representative, distributor representative, second-stage manufacturer, or converter, as such, in Arkansas without first obtaining a license therefor as provided in this chapter, regardless of whether or not the person maintains or has a place of business in Arkansas.

(b) Any person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of these capacities or having more than one (1) place where such a business is carried on or conducted shall be required to obtain and hold a separate and current license for each capacity and place of business.

(c)(1) However, any licensed motor vehicle dealer shall not be required to obtain a license as a motor vehicle lessor for any location licensed as a motor vehicle dealer.

(2) A motor vehicle lessor shall be required to obtain only one (1) motor vehicle lessor's license, regardless of the number of leasing locations he or she owns and operates but shall list each location on his or her application and pay a fee of fifty dollars ($50.00) for each location.

(3) New lease locations opened after a license is issued shall be approved by the Arkansas Motor Vehicle Commission but shall not require a new license.

(4) A motor vehicle lessor shall sell or offer for sale motor vehicles only from an established place of business and only after application to, approval of, and licensure at each location by the commission.

(d)(1) No person may engage in the business of buying, selling, or exchanging motor vehicles, unless he or she:

(A) Holds a valid license issued by the commission for the makes of motor vehicles being bought, sold, or exchanged; or

(B) Is a bona fide employee or agent of the licensee.

(2) For purposes of this subsection, "engage in the business of buying, selling, or exchanging motor vehicles" means:

(A) Displaying for sale motor vehicles on a lot or showroom;

(B) Advertising for sale new motor vehicles regardless of the medium used; or

(C) Regularly or actively soliciting buyers for motor vehicles.

History. Acts 1975, No. 388, §§ 5, 8, 10; 1977, No. 838, § 2; 1985, No. 1032, §§ 3, 6; 1985, No. 1058, §§ 3, 6; A.S.A. 1947, §§ 75-2305, 75-2308, 75-2310; Acts 1989, No. 678, § 1; 1995, No. 568, § 4; 1997, No. 1154, § 9; 1999, No. 1042, § 2; 2001, No. 1053, § 2; 2009, No. 756, § 6.

A.C.R.C. Notes. Acts 1987, No. 620, § 2, provided, in part, that auto auctions, motor vehicle lessors and motor vehicle dealers, motor vehicle salesmen, and wholesalers, in used motor vehicles, shall be licensed pursuant to § 23-112-101 et seq. beginning July 1, 1985, and licenses relating to motor vehicles having fewer than four wheels shall be required beginning July 1, 1987.

Publisher's Notes. Acts 1985, No. 1032, § 7, and No. 1058, § 7, which were identical, provided that auto auctions, motor vehicle lessors and motor vehicle dealers, motor vehicle salesmen, and wholesalers, in used motor vehicles, must be licensed pursuant to this chapter beginning July 1, 1985.

Acts 1975, No. 388, § 8, as amended, is also codified as § 23-112-401.

Amendments. The 2009 amendment inserted "importer" in (a)(2), and made related and minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-112-302. Application for license.

(a) Applications for licenses required to be obtained under the provisions of this chapter shall:

(1) Be verified by the oath or affirmation of the applicants;

(2) Be on forms prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicants; and

(3) Contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the licenses applied for.

(b) The commission shall require that there be set forth in each application:

(1) Information relating to:

(A) The applicant's business integrity;

(B) Whether the applicant has an established place of business in the State of Arkansas and is primarily engaged in the pursuit, avocation, or business for which licenses are applied for; and

(C) Whether the applicant has the proper facilities and is able to properly conduct the business for which licenses are applied for; and

(2) Other pertinent information consistent with the safeguarding of the public interest and public welfare.

(c)(1)(A) In addition to the provisions of subsections (a) and (b) of this section, applications for licenses as:

(i) New motor vehicle dealers, must also be accompanied by the filing with the commission of a corporate surety bond in the penal sum of fifty thousand dollars ($50,000) on a bond form approved by the commission; and

(ii) New motorcycle dealers, new all-terrain vehicle dealers, new low speed vehicle dealers, and motor vehicle lessors, shall also be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars ($25,000) on a bond form approved by the commission.

(B) In each instance that a branch license is applied for, each application shall be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars ($25,000) on a bond form approved by the commission.

(C) Motor vehicle dealers shall also provide proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

(2) The bond shall be in effect upon the applicant's being licensed and shall be conditioned upon the applicant's complying with the provisions of this chapter.

(3) The bond shall be an indemnity for any loss sustained by any person by reason of the acts of the person bonded when those acts constitute grounds for the suspension or revocation of his or her license.

(4) The bond shall be executed in the name of the State of Arkansas for the benefit of any aggrieved party.

(5) The aggregate liability of the surety for all claimants, regardless of the number of years this bond is in force or has been in effect, shall not exceed the amount of the bond.

(6) The proceeds of the bond shall be paid upon receipt by the commission of a final judgment from an Arkansas court of competent jurisdiction against the principal and in favor of an aggrieved party.

(d)(1) In addition to the provisions of subsections (a)-(c) of this section, applications for licenses as motor vehicle dealers in new motor vehicles must also be accompanied by the filing with the commission of a bona fide contract or franchise then in effect between the applicant and a manufacturer or distributor of the new motor vehicles proposed to be dealt in.

(2) However, if the contract or franchise has already been filed with the commission in connection with a previous application made by the

applicant, the applicant, in lieu of again filing the contract or franchise, shall identify the contract or franchise by appropriate reference and file all revisions and additions, if any, which have been made to the contract or franchise.

(e) The applicant for a license as a new motor vehicle dealer shall furnish satisfactory evidence that the applicant:

(1) Maintains adequate space in the building or structure wherein the applicant's established business is conducted for the display of new motor vehicles or will have the facilities within a reasonable time after receiving a license;

(2) Has or will have adequate facilities in the building or structure to perform repair and service work on motor vehicles and adequate space for storage of new parts and accessories for the motor vehicles; and

(3) Will perform repair and warranty services on a motor vehicle at the licensed location.

(f)(1) Every licensed dealer shall maintain for three (3) years after the date of purchase records of each vehicle transaction to which the dealer was a party.

(2) Dealers shall maintain copies of all documents executed in connection with any transaction, which may include bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection by the Executive Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

(g)(1) The licensee applying for a branch license shall not utilize any portion of a franchise name or product nameplates.

(2) A licensee applying for a branch license shall remain in the relevant market area, as defined in the franchise or selling agreement approved by the franchiser and franchisee and on file in the commission office or as defined in this chapter pertaining to relevant market area, whichever is greater.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 5; 1999, No. 1042, § 3; 2001, No. 1053, § 3; 2009, No. 756, § 7; 2013, No. 561, § 4.

Amendments. The 2009 amendment rewrote (e)(2), inserted (e)(3), and made related and minor stylistic changes.

The 2013 amendment, in (c)(1)(A)(ii), inserted "new low speed vehicle dealers," and substituted "shall" for "must."

CASE NOTES

License.

Substantial evidence supported an agency finding that used motor vehicle dealer licensing requirements were intended to protect public in retail transactions with used car dealers, not general creditors or business partners. Lawyers Sur. Corp. v. Flowers, 76 Ark. App. 415, 66 S.W.3d 669 (2002).

23-112-303. Application fees.

(a) All applications for licenses shall be accompanied by the appropriate fees in accordance with the schedule set out in this subchapter.

(b) In the event any application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

(c) The schedule of license fees to be charged and received by the Arkansas Motor Vehicle Commission for the licenses issued pursuant to this subchapter shall be as follows:

(1) For each manufacturer, distributor, factory branch and division, or distributor branch and division, second-stage manufacturer, importer, and converter, nine hundred dollars ($900);

(2) For each motor vehicle dealer or motor vehicle lessor, one hundred dollars ($100);

(3) For each manufacturer, distributor, or factory representative, four hundred dollars ($400);

(4) For each motor vehicle salesperson, fifteen dollars ($15.00);

(5) For each branch location, twenty-five dollars ($25.00); and

(6) For each replacement certificate of license, ten dollars ($10.00).

(d)(1) Any person, firm, or corporation required to be licensed under this subchapter who fails to make application for the license at the time required shall pay a penalty of fifty percent (50%) of the amount of the license fee for each thirty (30) days of default, in addition to the fees required to be paid pursuant to subsection (c) of this section. However, the penalty may be waived, in whole or in part, within the discretion of the commission.

(2) License applications for sales personnel shall be received in the commission office within thirty (30) days of employment.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 6; 1997, No. 1154, § 14; 2001, No. 1053, § 4.

23-112-304. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, distributors, etc.

(a) The license issued to each motor vehicle dealer, manufacturer, distributor, factory branch or division, or distributor branch or division shall specify the location of the factory, office, branch, or division thereof.

(b) In case the location is changed, the Arkansas Motor Vehicle Commission shall endorse the change of location on the license without charge if it is within the same county.

(c) A change of location to another county shall require a new license.

(d) Licensees shall notify the commission in writing of any change in the business or corporate name or structure and of any alternate name or names in which the company will do business, "DBA names", and shall provide the original issue license with the notification of name change or addition of DBA name or names. The commission shall endorse the change on the license without charge.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 7; 1997, No. 1154, § 10; 2001, No. 1053, § 5.

23-112-305. Display of license — Change of employer — Factory representative and distributor representative.

(a) Every motor vehicle factory representative or distributor representative shall have his or her license upon his or her person when engaged in his or her business and shall display the license upon request.

(b) The name of the employer of the factory representative or distributor representative shall be stated on the license, and, in case of a change of employer, the holder of the license shall immediately mail the license to the Arkansas Motor Vehicle Commission for its endorsement of the change thereon.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 8; 2001, No. 1053, § 6.

23-112-306. Display of license — Change of employer — Salesperson.

(a) Every motor vehicle salesperson shall have his or her license upon his or her person or displayed at his or her place of employment, except as provided in this section, when engaged in his or her business and shall display the license upon request. The name and address of the applicant shall be stated on the license.

(b) In case of a change of employer, the following procedure shall be adhered to:

(1) Within three (3) days following the change, the licensee shall notify in writing the Arkansas Motor Vehicle Commission for its endorsement;

(2) Within three (3) days following the termination of employment of the licensee, the last employer of the licensee shall make a report to the commission setting forth the reasons why the services of the licensee were terminated and such other information as may be required by the commission;

(3) Upon receipt by the commission of the licensee's written notification and the last employer's report, the commission shall determine if it has grounds to believe, and does believe, that the licensee is no longer qualified under the provisions of this chapter as a motor vehicle salesperson. Under such circumstances, the commission shall immediately notify the licensee and the licensee's new employer in writing that a hearing will be held for the purpose of determining whether his or her license should be revoked or suspended, specifying the grounds for revocation or suspension, as the case may be, and the time and place for the hearing. The hearing and any and all appeals by the licensee with respect thereto shall be in accordance with the provisions of § 23-112-501 et seq.; and

(4)(A) If, after the commission receives the licensee's license and fee and his or her last employer's report, the Executive Director of the Arkansas Motor Vehicle Commission cannot for any reason endorse and mail to the licensee his or her license within a period of three (3) days following the receipt by the commission of the licensee's license and fee and his or her last employer's report, then and in that event the executive director shall mail to the licensee a permit in such form as the commission shall prescribe.

(B) The permit shall serve in lieu of a license until such time as the commission endorses and mails the license to the licensee, or until such time as the licensee's license is revoked or suspended in accordance with the provisions of this chapter.

(C) If the license is ultimately revoked or suspended, then immediately upon the revocation or suspension the licensee shall return the permit to the commission for cancellation.

(c) The commission shall maintain a permanent file with respect to each licensed motor vehicle salesperson. Each file shall contain all pertinent information with respect to the fitness and qualifications of each licensee for the use by the commission in determining from time to time whether his or her license should be revoked or suspended.

(d) There is no intent under this chapter to prevent a salesperson who has not previously been licensed as a salesperson from selling during the time required to process his or her application. The applicant shall be allowed to sell from the date of employment as long as the applicant and his or her dealer follow the procedure for license application.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 9; 2001, No. 1053, § 7.

A.C.R.C. Notes. Acts 2011, No. 298, § 4, provided: "FUND TRANSFER — MOTOR VEHICLE EDUCATION AND TRAINING. For the fiscal year ending June 30, 2008, and for each fiscal year thereafter, the Director of the Arkansas Motor Vehicle Commission may, from time to time as needed, certify to the Chief Fiscal Officer of the State the amount of funds necessary to transfer on his or her books and those of the State Treasurer and the Auditor of State, from the Motor Vehicle Commission Fund to the Department of Workforce Education Fund Account, to provide funds for expenses related to motor vehicle education and training. Fund transfer will be completed following quarterly review of program expenditures, including a review of the availability of program funding. In no event shall the amount of funds transferred under the provisions of this section exceed one hundred fifty thousand dollars ($150,000) in any one fiscal year."

23-112-307. Expiration of license.

Unless the Arkansas Motor Vehicle Commission by rule provides to the contrary, all licenses issued to:

(1) Manufacturers, distributors, factory or distributor branches, importers, second-stage manufacturers, converters, and their representatives expire June 30 following the date of issue; and

(2) Motor vehicle dealers, motor vehicle salespersons, and motor vehicle lessors expire December 31 following the date of issue.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 620, § 2; 1995, No. 568, § 10; 2001, No. 1053, § 8; 2009, No. 756, § 8.

Amendments. The 2009 amendment rewrote the section.

23-112-308. Denial, revocation, and suspension.

(a) Notwithstanding any other statute, the Arkansas Motor Vehicle Commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

(1)(A) For selling or soliciting sales of a motor vehicle without a license issued by the commission.

(B) The unlawful sale or solicitation of each motor vehicle shall constitute a separate offense;

(2) On satisfactory proof of the unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this chapter;

(3) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of this chapter;

(4) For failure to comply with any provision of this chapter or with any rule or regulation promulgated by the commission under authority vested in it by this chapter;

(5) Change of condition after license is granted or failure to maintain the qualifications for license;

(6) Continued violation of any of the provisions of this chapter or of any of the rules or regulations of the commission;

(7) For any violation of any law relating to the sale, distribution, or financing of motor vehicles;

(8) Defrauding any retail buyer to the buyer's damage;

(9) Failure to perform any written agreement with any retail buyer;

(10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license;

(11) Falsifying, altering, or neglecting to endorse or deliver a certificate of title to a transferee or lawful owner or failing to properly designate a transferee on a document of assignment or certificate of title;

(12) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen motor vehicle;

(13) Submitting a false affidavit setting forth that a title has been lost or destroyed;

(14) Passing title or reassigning title as a dealer without a dealer's license or when the dealer's license has been suspended or revoked;

(15) For a person representing that he or she is a dealer or salesperson, either verbally or in any advertisement, when the person is not licensed as such;

(16) Assisting any person in the sale of a motor vehicle who is not licensed as a dealer by the commission;

(17) Being a manufacturer who fails to specify the delivery and preparation obligations of its motor vehicle dealers, as is required for the protection of the buying public, prior to delivery of new motor vehicles to retail buyers;

(18)(A) On satisfactory proof that any manufacturer, distributor, distributor branch or division, or factory branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill any warranty agreement or to adequately and fairly compensate any of its motor vehicle dealers for labor, parts, or incidental expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer.

(B) Compensation for parts for two-wheeled, three-wheeled, and four-wheeled motorcycles and motor-driven all-terrain vehicles must be at the manufacturer's suggested retail price;

(19) For the commission of any act prohibited by §§ 23-112-301 — 23-112-307, 23-112-402, and 23-112-403, or the failure to perform any of the requirements of those sections;

(20) Using or permitting the use of special license plates assigned to him or her for any other purpose than those permitted by law;

(21) Disconnecting, turning back, or resetting the odometer of any motor vehicle in violation of state or federal law;

(22) Accepting an open assignment of title or bill of sale for a motor vehicle which is not completed by identifying the licensee as the purchaser or assignee of the motor vehicle;

(23)(A) Failure to notify the commission of a change in ownership, location, or franchise, or any other matters the commission may require by regulation.

(B) The notification shall be in written form and submitted to the commission at least fifteen (15) days prior to the effective date of the change;

(24) Failure to endorse and deliver an assignment and warranty of title to the buyer pursuant to § 27-14-902;

(25) Using or permitting the use of a temporary cardboard buyer's tag assigned to the dealer for any purpose other than permitted under § 27-14-1705; and

(26) Failure of a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin within a reasonable period of time.

(b) The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, or distributor branch or division may be limited to:

(1) One (1) or more municipalities or counties;

(2)(A) The sales area of any dealer whose franchise is unfairly cancelled or terminated within the purview of this chapter or whose franchise is not renewed in violation of the provisions of this chapter.

(B) However, when a franchise is unfairly cancelled or terminated within the purview of this chapter or is not renewed in violation of the provisions of this chapter in a metropolitan area serviced by several

motor vehicle dealers handling the same motor vehicles, the revocation or suspension shall not be applicable to the remaining motor vehicle dealers in the metropolitan area.

History. Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1991, No. 411, § 1; 1993, No. 383, § 4; 2001, No. 1053, § 9; 2009, No. 756, § 9.

Amendments. The 2009 amendment inserted (a)(25) and (a)(26).

CASE NOTES

Federal Jurisdiction.

The Arkansas Motor Vehicle Commission's biased application of the 1991 amendment of subdivision (a)(2) of this section to a pre-existing contract mandated that a federal district court exercise its jurisdiction over a claim brought pursuant to 42 U.S.C. § 1983. Yamaha Motor Corp. v. Riney, 21 F.3d 793 (8th Cir. 1994).

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-309. Monetary penalty in lieu of suspension or revocation of license.

(a)(1) If after alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that any person holding a license under this chapter is guilty of any violation of this chapter or regulations promulgated under this chapter, it shall have the power and authority to impose a monetary penalty upon the licensee in lieu of suspension or revocation of license.

(2) The commission shall have the power and authority to require the licensee to pay the monetary penalty with the sanction that the license may be suspended until the penalty is paid, which time shall not exceed ninety (90) days from entry of the commission's order or final order on appeal.

(3) The penalty in lieu of suspension or revocation may be imposed only if the commission formally finds that the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results.

(b)(1) If the commission finds that there is sufficient cause upon which to base the revocation of a license, the amount of the monetary penalty in lieu of revocation shall not exceed ten thousand dollars ($10,000).

(2) If the commission finds that there is sufficient cause upon which to base the suspension of a license, the amount of the monetary penalty in lieu of suspension shall not be less than fifty dollars ($50.00) nor more than five hundred dollars ($500) per day for each day the license would otherwise be suspended. However, the amount of the penalty shall not exceed the aggregate of five thousand dollars ($5,000).

(c) No penalty shall be imposed if the license has been revoked by the commission for the violation.

(d) Each instance when this chapter or a regulation is violated shall constitute a separate violation.

(e) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission shall have the power to file suit in Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

History. Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1999, No. 1042, § 4; 2001, No. 1053, § 10.

CASE NOTES

Cited: Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004).

23-112-310. Delivery, preparation, and warranty obligations.

(a)(1) Every licensed motor vehicle manufacturer, distributor, second-stage manufacturer, importer, or converter shall file with the Arkansas Motor Vehicle Commission with its initial application for a license:

(A) A copy of the documents stating the delivery, preparation, and warranty obligations of its motor vehicle dealers; and

(B) A schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with the delivery, preparation, and warranty obligations.

(2) The documents shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer or distributor.

(3) Any revisions to the delivery, preparation, and warranty obligations or to the schedule of compensation shall be filed no later than September 15 of each calendar year.

(b) Any mechanical, body, or parts defects arising from any express or implied warranties of any manufacturer shall constitute the manufacturer's product or warranty liability.

(c) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this subsection, the dealer's delivery, preparation, and warranty obligations as filed with the commission shall constitute the dealer's sole responsibility for product liability as between the dealer and the manufacturer or distributor, and, except for a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer or distributor shall reimburse the dealer for all losses incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer's having been named a party in a product liability action.

(d)(1)(A) A manufacturer, distributor, distributor branch or division, or factory or division branch shall not pay to any of its motor vehicle dealers a labor rate per hour or parts price for warranty work that is less than that charged by the dealer to its retail customers, provided the rate is reasonable compared to other same line-make dealers in

the dealer's relevant market area or the dealer's competitive market area.

(B) Conversely, a dealer shall not charge to its manufacturer, distributor, distributor branch or division, or factory branch or division a labor rate per hour or parts price in excess of the rate charged to its retail customers.

(C) A manufacturer, distributor, distributor branch or division, or factory branch or division of new motorcycles, motorized cycles, and all-terrain vehicles shall not pay to any new motor vehicle dealers of motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour or parts price for warranty work that is less than that charged by the new motor vehicle dealer to its retail customers, provided that the rate is reasonable compared to other same line make motor vehicle dealers in the new motor vehicle dealer's relevant market area or the new motor vehicle dealer's competitive market area.

(2)(A) All claims made by motor vehicle dealers for the labor, parts, or incidental expenses shall be paid within thirty (30) days following their approval.

(B) All claims shall be either approved or disapproved within thirty (30) days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within the period, and each notice shall state the specific grounds upon which the disapproval is based.

(3) In no event shall any manufacturer, distributor, distributor branch or division, or factory or division branch refuse to pay to any of its motor vehicle dealers for any warranty work, as long as the work in question was properly performed.

History. Acts 1975, No. 388, §§ 5, 6; 1985, No. 1032, §§ 3, 5; 1985, No. 1058, §§ 3, 5; A.S.A. 1947, §§ 75-2305, 75-2306; Acts 1991, No. 411, § 2; 1997, No. 1154, § 11; 1999, No. 1042, § 5; 2001, No. 1053, § 11; 2009, No. 756, § 10; 2011, No. 1005, § 7; 2013, No. 1043, § 4.

Amendments. The 2009 amendment subdivided (d)(1), inserted "provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area" in (d)(1)(A), inserted "or parts price" in (d)(1)(A) and (d)(1)(B), inserted (d)(1)(C), and made minor stylistic changes.

The 2011 amendment added (d)(1)(D).

The 2013 amendment deleted former (d)(1)(C) and redesignated former (d)(1)(D) as present (d)(1)(C).

23-112-311. Addition or relocation of new motor vehicle dealer.

(a)(1) In all instances, when a manufacturer or distributor seeks to enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer within or into a relevant market area where the same line make is then represented, the manufacturer or distributor shall in writing first notify the Arkansas Motor Vehicle Commission and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish

an additional dealer or to relocate an existing dealer within or into that market area.

(2)(A) Within twenty (20) days of receiving the notice or within twenty (20) days after the end of any appeal procedure provided by the manufacturer or distributor, any new motor vehicle dealer may file with the commission to protest the establishing or relocating of the new motor vehicle dealer.

(B) When a protest is filed, the commission shall inform the manufacturer or distributor that a timely protest has been filed and that the manufacturer or distributor shall not establish or relocate the proposed new motor vehicle dealer until the commission has held a hearing, nor thereafter if the commission has determined that there is good cause for not permitting the addition or relocation of the new motor vehicle dealer.

(C) In the event that a protest is filed with the commission, the party desiring the addition or relocation of a new motor vehicle dealer pursuant to this subsection shall pay for and provide a copy of a survey showing the proposed location of the additional or relocated new motor vehicle dealer in relation to other existing dealers of the same line make in the relevant market area.

(b) This section does not apply:

(1) To the relocation of an existing new motor vehicle dealer, other than a new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles, within that dealer's relevant market area, provided that the relocation not be at a site within ten (10) miles of a licensed new motor vehicle dealer for the same line make of motor vehicles;

(2) If the proposed new motor vehicle dealer, other than a new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles, is to be established at or within two (2) miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle has ceased operating within the previous two (2) years; or

(3) To the relocation of an existing new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles within that dealer's relevant market area, provided that the relocation not be at a site within twenty-five (25) miles of a licensed new motor vehicle dealer for the same line make of motor vehicles.

(c)(1) In determining whether good cause has been established for not entering into a franchise establishing or relocating an additional new motor vehicle dealer for the same line make, the commission shall take into consideration the existing circumstances, including without limitation:

(A) Permanency of the investment of both the existing and proposed new motor vehicle dealers;

(B) Growth or decline in population and new motor vehicle registrations in the relevant market area;

(C) Effect on the consuming public in the relevant market area;

(D) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(E) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; and

(F) Whether the establishment of an additional new motor vehicle dealer would increase competition and, therefore, be in the public interest.

(2) In determining whether good cause has been established for not entering into a franchise establishing or relocating an additional new motor vehicle dealer for the same line make, the burden of proof is on the manufacturer or distributor to show it has good cause for granting the new franchise, except when an existing franchisee initiated the relocation.

(d)(1) The commission shall conduct the hearing and render its final determination within one hundred eighty (180) days after a protest is filed.

(2) Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated new motor vehicle dealer, unless the delay is caused by acts of the manufacturer or distributor or the relocating or additional dealer.

(e) Any parties to a hearing by the commission concerning the establishing or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1997, No. 1154, § 12; 1999, No. 1042, § 6; 2001, No. 1053, § 12; 2009, No. 756, § 11; 2011, No. 1005, § 8.

Amendments. The 2009 amendment substituted "motor vehicle" for "car" in (c)(2), and made a minor stylistic change in the introductory language.

The 2011 amendment added the (c)(1) designation; redesignated former (c)(1) through (c)(6) as (c)(1)(A) through (c)(1)(F); added (c)(2); added the (d)(1) designation; substituted "one hundred eighty (180)" for "one hundred twenty (120)" in (d)(1); and added the (d)(2) designation.

CASE NOTES

Analysis

Applicability.
Regulations.

Applicability.

The the notice, protest, and hearing requirement of this section does not apply to dealers of motorcycles and all terrain vehicles. Yamaha Motor Corp., U.S.A. v. Richard's Honda Yamaha, 344 Ark. 44, 38 S.W.3d 356 (2001).

Regulations.

Arkansas Motor Vehicle Commission Regulation 3-4 was held invalid as contrary to this section where it gave the commission the authority to hold a hearing on every new dealer application, while this section permits hearings on only

some applications, i.e., not applications for new motor vehicle dealers of motorcycles or all terrain vehicles, for new dealerships only when a protest has been filed with the commission; in addition, the regulation placed the burden of proving good cause to grant a license on the party applying for the license, whereas this section places the burden of establishing good cause to deny the application on the protesting party. Yamaha Motor Corp., U.S.A. v. Richard's Honda Yamaha, 344 Ark. 44, 38 S.W.3d 356 (2001).

Cited: Chrysler Motors Corp. v. Thomas Auto Co., 939 F.2d 538 (8th Cir. 1991).

23-112-312. License reciprocity with other states.

(a) The Arkansas Motor Vehicle Commission may enter into reciprocal agreements with motor vehicle commissions or their equivalents in other states to allow motor vehicle dealers who are licensed in those states to obtain a temporary permit in this state, pursuant to the rules promulgated by the Arkansas Motor Vehicle Commission.

(b) Any person who is licensed under the laws of another state or territory of the United States to engage in business as a motor vehicle dealer may apply for a temporary permit in this state upon production of satisfactory proof that:

(1) The requirements for licensing in the particular state or territory were equivalent to the requirements in effect in this state at the date of the applicant's licensing;

(2) The applicant meets all the qualifications for the temporary permit and pays the fees specified for the permits pursuant to the rules of the Arkansas Motor Vehicle Commission; and

(3) The applicant meets other reasonable qualifications as may be adopted by the Arkansas Motor Vehicle Commission.

History. Acts 1997, No. 1154, § 1; 2007, No. 235, § 2.

23-112-313. Warranty agreements.

(a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall properly fulfill any warranty or recall agreement and adequately and fairly compensate each of its motor vehicle dealers for labor and parts.

(b) The compensation shall not fail to include reasonable compensation for diagnostic work, repair service, labor, and parts.

(c)(1) Time allowances for the diagnosis and performance of warranty or recall work and service shall be reasonable and adequate for the work to be performed.

(2) In the determination of what constitutes reasonable compensation for warranty or recall work and service under this subsection, the principal factor to be considered is the prevailing wage rates, exclusive of routine maintenance, that are being charged by the dealers in the relevant market area in which the motor vehicle dealer is doing business.

(3) The compensation of a motor vehicle dealer for warranty or recall service shall not be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided the rate is reasonable compared to other same line make dealers in the dealer's relevant market area or the dealer's competitive market area.

(d)(1)(A) The pricing for a recalled part shall not be reduced to an amount that is less than the original dealer cost or price for the same part unless the manufacturer obtains a discounted rate for the recalled part from a supplier.

(B) A recalled part is considered the same part if it is substantially the same part regardless of the part number.

(2) A part-by-part analysis is not required to determine the retail rate for parts.

(3) The parts mark-up shall not be substituted for a handling allowance or similar pricing amount that results in the reduction of compensation for the dealer.

(e)(1) All claims under this section, either original or resubmitted, made by motor vehicle dealers for the labor and parts shall be either approved or disapproved within thirty (30) days following their approval or disapproval.

(2)(A)(i) The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and the notice shall state the specific grounds upon which the disapproval is based.

(ii) The motor vehicle dealer may correct and resubmit the disapproved claims within thirty (30) days of receipt of disapproval.

(B) Any claims not specifically disapproved in writing within thirty (30) days from their submission shall be deemed approved, and payment shall follow within thirty (30) days.

(3)(A) A claim shall not be disapproved because a clerical error was made that does not render the amount of the claim incorrect, including without limitation clerical errors that occur as a result of a manufacturer or distributor's prior approval process, provided the dealer receives preapproval pursuant to the established practices of the manufacturer or distributor for these programs.

(B) However, a dealer may contest the disapproval through the manufacturer's appeals process.

(4)(A) The manufacturer or franchiser may:

(i) Require documentation for claims;

(ii) Audit the claims within a one-year period from the date the claim was paid or credit issued by the manufacturer or franchiser; and

(iii) Charge back any false or unsubstantiated claims.

(B) The audit and charge-back provisions of this subsection also apply to all other incentive and reimbursement programs for a period of twelve (12) months after the date of the transactions that are subject to audit by the franchiser.

(C) However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this state that the claim is fraudulent within a period not to exceed two (2) years from the date of the claim in question.

(D)(i) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (e)(4) within ninety (90) days of notification by the manufacturer or distributor.

(ii) If a dealer files an appeal of the chargeback with the commission, the manufacturer or distributor shall not levy the chargeback until the appeal is resolved. The commission shall hold a hearing on the matter no later than one hundred twenty (120) days from the time the appeal is filed unless all parties have otherwise agreed to settle the matter.

(iii) An appeal by the licensee under this subdivision (e)(4)(D) shall be in accordance with § 23-112-501 et seq.

History. Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§ 1, 2; 2009, No. 756, § 12; 2011, No. 1005, § 9; 2013, No. 1043, § 5.

Amendments. The 2009 amendment redesignated the subsections and subdivisions; inserted present (d)(1), (d)(3), and (e)(3)(B); inserted "and parts" in (b); inserted "provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area" in (c)(3); substituted "section" for "subsection" in (e)(1) and substituted "ninety (90) days" for "thirty (30) days" in (e)(4)(D)(i); and made related and minor stylistic changes throughout the section.

The 2011 amendment inserted "including without limitation ... distributor for these programs" in (e)(3)(A).

The 2013 amendment deleted (f).

23-112-314. Civil penalty.

(a) If after request for alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that any person not holding a license under this chapter is guilty of any violation of this chapter or regulations promulgated thereunder, the commission shall have the power and authority to impose a monetary penalty upon the person not to exceed one thousand dollars ($1,000) per violation.

(b) Each day of violation of this chapter or of a regulation shall constitute a separate violation subjecting the person to a separate civil penalty.

(c) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission shall have the power to file suit in Pulaski County Circuit Court to obtain a judgment for the amount of the penalty not paid.

(d)(1) Repeated violations by any person not holding a license under this chapter shall result in an increase in the penalty assessed by the commission.

(2) The terms "second" and "subsequent" violation as used in this section mean a violation of the same nature as a previously remedied

violation that occurs within five (5) years of the remedied violation by any person not holding a license under this chapter.

(3) The commission shall have the power and authority to impose a penalty not to exceed two thousand five hundred dollars ($2,500) for a second violation, with the penalty increasing in increments of two thousand five hundred dollars ($2,500) for each subsequent violation.

History. Acts 1999, No. 1042, § 8; 2001, No. 1053, § 13.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-112-315. [Repealed.]

Publisher's Notes. This section, concerning motor vehicle dealer documentary fees and disclosures, was repealed by Acts 2007, No. 366, § 3. The section was derived from Acts 2001, No. 1600, § 1; 2003, No. 1722, § 1.

23-112-316. Delivery prior to sale — Disclosures.

(a) As used in this section:

(1)(A) "Contract for sale" means the final agreement between a new motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financer.

(B) "Contract for sale" includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) "Delivery prior to sale" means a delivery of a motor vehicle by a new motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a new motor vehicle dealer engages in a delivery prior to sale, then the new motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the new motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the new motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The new motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed-upon interest rate;

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The new motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer; and

(B) The new motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and

(4) If the consumer decides not to purchase the motor vehicle, the consumer shall return the motor vehicle to the new motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the new motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Arkansas Motor Vehicle Commission shall promulgate rules and regulations to implement, enforce, and administer this section.

History. Acts 2005, No. 1687, § 1.

23-112-317. Motor vehicle dealer service and handling fees.

(a) A motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of a new or a used motor vehicle if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b)(1) A motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a new or a used motor vehicle for:

(A) The handling, processing, and storage of documents; and

(B) Other administrative and clerical services.

(2)(A) The service and handling fee may be charged to allow cost recovery for motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the motor vehicle dealer.

(c)(1) The Arkansas Motor Vehicle Commission shall determine by rule the amount of the service and handling fee that may be charged by a motor vehicle dealer. The service and handling fee shall be no less than zero dollars ($0.00) and no more than one hundred twenty-nine dollars ($129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

(A) Charged to all retail customers; and

(B) Disclosed on the retail buyer's order form as a separate itemized charge.

(3) If a service and handling fee is charged under this section, the service and handling fee is not required to be charged to all fleet sales.

(d) A preliminary worksheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

(1) The amount of the service and handling fee; and

(2) The following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW."

(e) The Arkansas Motor Vehicle Commission may promulgate rules to implement, enforce, and administer this section.

History. Acts 2007, No. 366, § 1; 2013, No. 561, § 5.

Amendments. The 2013 amendment added (c)(3).

23-112-318. Negative equity financing and disclosures permitted.

A new or used motor vehicle dealer or a new or used motor vehicle lessor is not required to be licensed by the State Bank Department in order to:

(1)(A) Pay in connection with a credit sale transaction, any amount necessary to satisfy a lease, a security interest, or a lien upon a motor vehicle that is either returned or traded in to the new or used motor vehicle dealer or the new or used motor vehicle lessor by the purchaser of a new or used motor vehicle.

(B) The amount paid by the new or used motor vehicle dealer or by the new or used motor vehicle lessor may be included and disclosed as part of the credit sale transaction; or

(2)(A) Pay in connection with a lease transaction, any amount necessary to satisfy a lease, a security interest, or a lien upon a motor vehicle that is either returned or traded in to the new or used motor

vehicle dealer or the new or used motor vehicle lessor by the lessee of a new or used motor vehicle.

(B) The amount paid by the new or used motor vehicle dealer or by the new or used motor vehicle lessor may be included and disclosed as part of the amount to be paid by the lessee under the lease transaction.

History. Acts 2007, No. 649, § 1.

Subchapter 4 — Unlawful Practices

SECTION.
23-112-401. [Repealed.]
23-112-402. Dealer and salesperson.
23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters.
23-112-404. Motor vehicle lessors.
23-112-405. [Repealed.]
23-112-406. Acting as broker.
23-112-407. [Repealed.]

Effective Dates. Acts 1977, No. 838, § 3: approved Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission does not presently have adequate authority to compel compliance with the Arkansas Motor Vehicle Commission Act and Commission rules and regulations and that authority to seek injunctive relief against violations of the Act is necessary to the accomplishment of the Commission's statutory responsibility to license and regulate the new motor vehicle industry in this State. Therefore, an emergency is found to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall take effect upon the date of its passage."

Identical Acts 1985, Nos. 1032 and 1058, § 9: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that neither the Arkansas Motor Vehicle Commission nor other board or commission presently have power to license and regulate dealers, salesmen, wholesalers who deal in used motor vehicles, motor vehicles lessors or auto auctions and that authority to regulate the aforesaid functions of the motor vehicle industry is necessary to prevent and remedy public injury in motor vehicle transactions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 65, § 11: Feb. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission Act does not adequately regulate the actions of certain importers and others who purchase motor vehicles for sale to distributors and that such regulations are needed to protect distributors and the public from unfair, discriminatory and coercive practices. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1042, § 16: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of this act are of essential importance to correct the persistent unfair treatment of dealers by manufacturers of the same line, in matters such as manufacturers' systematic denial of dealers' warranty and recall claims, manufacturers' offering certain models to their franchised dealers on an arbitrary and unfair basis; that this act is essential to protect the stability and viability of these business owners in this state and the ability of consumers to pur-

chase automobiles without undue interference from manufacturers; and other similar matters. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-401. [Repealed.]

Publisher's Notes. This section, concerning penalties, was repealed by Acts 2001, No. 1053, § 14. The section was derived from Acts 1975, No. 388, § 8; 1977, No. 838, § 2; A.S.A. 1947, § 75-2308.

23-112-402. Dealer and salesperson.

It shall be unlawful for a motor vehicle dealer or a motor vehicle salesperson:

(1) To require a purchaser of a motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts, or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts, or accessories which are already installed on the car when received by the dealer;

(2) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle; or

(3) To resort to or use any false or misleading advertisement in connection with his or her business as a motor vehicle dealer or motor vehicle salesperson.

History. Acts 1975, No. 388, § 5; A.S.A. 1947, § 75-2305; Acts 2001, No. 1053, § 15.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters.

(a) It shall be unlawful:

(1) For a manufacturer, distributor, second-stage manufacturer, importer, converter, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof, to coerce or attempt to coerce any motor vehicle dealer:

(A) To order or accept delivery of any motor vehicles, appliances, equipment, parts, or accessories therefor or any other commodities which shall not have been voluntarily ordered by the motor vehicle dealer;

(B) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer thereof;

(C) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(D) To contribute or pay money or anything of value into any cooperative or other advertising program or fund; or

(E) To file for or to use a legal or "d/b/a" name or identification other than a name of choice by the dealer;

(2) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A)(i) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order to any licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles that are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery.

(ii) However, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to forces of nature, work stoppages or delays due to strikes or labor difficulties, freight, embargoes, or other causes over which the manufacturer or distributor, or any agent thereof, has no control;

(B)(i) To engage in any of the following:

(a) To coerce or attempt to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof; or

(b) To do any other act prejudicial to the motor vehicle dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the motor vehicle dealer.

(ii) However, good faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this chapter;

(C)(i)*(a)* To terminate or cancel the franchise or selling agreement of any dealer without due cause.

(b) The nonrenewal of a franchise or selling agreement without due cause shall constitute an unfair termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement.

(c) As used in this subchapter, tests for determining what constitutes due cause for a manufacturer or distributor to terminate a franchise or sales and service agreement include whether the motor vehicle dealer:

(1) Has transferred a majority ownership interest in the dealership without the manufacturer's or distributor's consent;

(2) Has made a material misrepresentation or committed a fraudulent act, or both, in applying for or in acting under the franchise agreement;

(3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or her that has not been discharged within sixty (60) days after the filing, is in default under a security agreement in effect with the manufacturer or distributor, or is in receivership;

(4) Has engaged in unfair business or trade practices;

(5) Has failed to fulfill the warranty obligations of the manufacturer or distributor required to be performed by the motor vehicle dealer;

(6) Has inadequate motor vehicle sales and service facilities, equipment, vehicle parts, and unqualified service personnel to provide for the needs of the consumers for the motor vehicles handled by the franchisee and is rendering inadequate service to the public;

(7) Has failed to comply with an applicable federal, state, or local licensing law;

(8) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

(9) Has failed to operate in the normal course of business for ten (10) consecutive business days or has terminated his or her business;

(10) Has relocated his or her place of business without the manufacturer's or distributor's consent; or

(11) Has failed to comply with the terms of the franchise, the reasonableness and fairness of the franchise terms, and the extent and materiality of the franchisee's failure to comply.

(d) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor

branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(ii)*(a)* The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the Arkansas Motor Vehicle Commission of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for the termination or cancellation.

(b) However, in the event that the commission finds that the franchise or selling agreement has been abandoned by the dealer, the commission, for good cause, may waive the sixty-day notice requirement and allow for the immediate termination of the franchise or selling agreement.

(iii)*(a)* The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the commission at least sixty (60) days before the contractual term of its franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal in those cases in which there is no intention to renew it.

(b) In no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty (60) days following the written notice.

(iv)*(a)* A motor vehicle dealer who receives written notice that its franchise or selling agreement is being terminated or cancelled or who receives written notice that its franchise or selling agreement will not be renewed may file with the commission within the sixty-day notice period a verified complaint for the commission's determination as to whether the termination or cancellation or nonrenewal is unfair under this chapter.

(b) That franchise or selling agreement shall continue in effect until final determination of the issues raised in the complaint as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., notwithstanding anything to the contrary contained in this chapter or in the franchise or selling agreement.

(c) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(v)*(a)* If the franchise agreement, sales and service agreement, or bona fide contract is terminated or cancelled, the terminating or canceling party shall notify the commission of the termination or cancellation of the franchise or selling agreement at least sixty (60) days before the effective date.

(b) For motor vehicles other than motor homes, this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary termination or cancellation of the franchise or selling agreement;

(D) To resort to or use any false or misleading advertisement in connection with its business as a manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof;

(E)(i) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in a lesser actual price.

(ii) However, the provisions of this subdivision (a)(2)(E) shall not apply:

(a) To sales to a motor vehicle dealer for resale to any unit of federal, state, or local government;

(b) To sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated, or used by the dealer in a driver education program; or

(c) So long as a manufacturer or distributor, or any agent thereof, offers to piggyback bid allowances to all motor vehicle dealers of the same line make at the same allowance for sales to a local government in that dealer's relevant market area.

(iii) Nothing contained in this subdivision (a)(2)(E) shall be construed to prevent the utilization of sales promotion plans or programs or the offering of volume discounts through new motor vehicle dealers, for fleet or volume purchasers, if the program is available to all new motor vehicle dealers from the same manufacturer in this state;

(F) To offer to sell or to sell any new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in a lesser actual price;

(G)(i) To offer to sell or to sell parts and accessories to any new motor vehicle dealer for use in his or her own business for the purpose of repairing or replacing the parts and accessories, or comparable parts and accessories, at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts and accessories for use in its own business.

(ii) However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets. Therefore, nothing contained in this subdivision (a)(2)(G) shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale

to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

(H)(i) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of its dealership or the means by or through which it finances the operation of the dealership, provided that:

(a) The dealer at all times meets any capital standards agreed to between the dealership and the manufacturer or distributor; and

(b) The standards are deemed reasonable by the commission.

(ii) If the dealer of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond in writing, giving or withholding consent, within sixty (60) days of receipt of the written request, consent is deemed to be given;

(I)(i) Notwithstanding the terms of any franchise agreement, to fail to give effect or to attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein, or management thereof, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within sixty (60) days of receipt of the notice; or

(b) It is shown to the commission after a hearing that the result of such a sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(ii) If the franchisee of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing within sixty (60) days of receipt of the written request, consent is deemed to be given;

(J)(i) Notwithstanding the terms of any franchise agreement, to prevent, attempt to prevent, or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution applicable to the decedent's estate, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within thirty (30) days of receipt of the notice; or

(b) It is shown to the commission, after notice and hearing, that the result of such a succession will be detrimental to the public interest or to the representation of the manufacturer or distributor.

(ii) However, nothing in this subdivision (a)(2)(J) shall prevent a dealer, during his or her lifetime, from designating any person as his or her successor dealer by written instrument filed with the manufacturer or distributor.

(iii) If the dealer's successor, heir, or devisee requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing, within thirty (30) days of receipt of the written request, consent is deemed to be given;

(K)(i) Notwithstanding the terms of any franchise agreement, to fail to pay to a dealer or any lienholder in accordance with their respective interests after the termination of franchise:

(a) The dealer cost plus any charges by the manufacturer, distributor, or a representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year and one (1) year prior model year in the dealer's inventory;

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory:

(1) Was purchased from the manufacturer by the dealer and is in the original package;

(2) Is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory; or

(3) Was purchased in the ordinary course of business by the dealer from another authorized dealer so long as the authorized dealer purchased the part or accessory directly from the manufacturer or distributor or from an outgoing authorized dealer as part of the dealer's initial inventory;

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, distributor, or representative, if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative;

(d) The fair market value of all special tools and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and equipment subject to repurchase;

(f) The balance of all claims for warranty and recall service and all other money owed by the manufacturer to the dealer;

(g)(1) Except as provided under subdivision (a)(2)(K)(i)*(g)(2)* of this section, the fair market value of the franchise that is at least equivalent to the fair market value of the franchise one (1) day before the manufacturer announces the action that results in the termination or discontinuance of a line make.

(2) If the termination, cancellation, discontinuance, or nonrenewal is due to a manufacturer's change in distributors or manufacturer, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the distributor, manufacturer, new distributor, or new manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line make new motor vehicle dealers;

(h)(1) Compensation for the actual pecuniary loss caused by the franchise termination, cancellation, or nonrenewal unless for due cause.

(2) In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer for the line make covered by the franchise shall be considered. If the dealer and the manufacturer, importer, or distributor cannot agree on the amount of compensation to be paid under this subchapter, either party may file an action in a court of competent jurisdiction; or

(i) Any sums due as provided by subdivision (a)(2)(K)(i)*(a)* of this section within sixty (60) days after termination of a franchise and any sums due as provided by subdivisions (a)(2)(K)(i)*(b)-(g)* of this section within ninety (90) days after termination of a franchise. As a condition of payment, the dealer shall comply with reasonable requirements with respect to the return of inventory as are set out in the terms of the franchise agreement. A manufacturer, distributor, or representative who fails to pay those sums within the prescribed time or at such time as the dealer and lienholder, if any, proffer good title before the prescribed time for payment, is liable to the dealer for:

(1) The greatest of dealer cost, fair market value, or current price of the inventory;

(2) Interest on the amount due calculated at the rate applicable to a judgment of a court; and

(3) Reasonable attorney's fees and costs.

(ii) Obligations under this subdivision (a)(2)(K) do not apply if the termination is a result of the conviction of the franchisee in a court of competent jurisdiction of an offense that is punishable by a term of imprisonment in excess of one (1) year and the offense is substantially related to the business conducted pursuant to the franchise;

(L)(i) To fail or refuse to offer its same line make franchised dealers all models manufactured for that line make.

(ii) No additional requirements over the requirements originally required to initially obtain a dealership may be required of existing franchised dealers to receive any model by that line make;

(M)(i) To offer to sell or to sell any motor vehicle to a consumer, except through a licensed new motor vehicle dealer holding a fran-

chise, a sales and service agreement, or a bona fide contract for the line make covering the new motor vehicle or as may otherwise be provided in subdivision (a)(3) of this section.

(ii) This subdivision (a)(2)(M) does not apply to manufacturer sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer;

(N) To prohibit or require a dealer to enter into a franchise or sales agreement with third parties, regardless of the location of the dealership or proposed dealership;

(O)(i) To require, coerce, or attempt to coerce any franchisee in this state to refrain from or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motor vehicle or related products in the same or separate facilities as those of the franchiser.

(ii) This subdivision (a)(2)(O) does not apply unless:

(a) The franchisee maintains a reasonable line of credit for each make or line of new motor vehicle;

(b) The franchisee remains in compliance with the franchise and any reasonable facilities requirement of the franchiser; and

(c) No change is made in the principal management of the franchisee.

(iii) The reasonable facilities requirement shall not include any requirement that the franchisee establish or maintain exclusive facilities, personnel, or display space when such requirements would not otherwise be justified by reasonable business considerations.

(iv)*(a)* Before the addition of a line make to the dealership facilities, the franchisee must first request consent of the franchiser, if required by the franchise agreement.

(b) Any decision of the franchiser with regard to dualing of two (2) or more franchises shall be granted or denied within sixty (60) days after a written request from the new motor vehicle dealer. The franchiser's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;

(P)(i) To fail to continue in full force and operation a motor vehicle dealer franchise agreement, notwithstanding a change, in whole or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement.

(ii) The appointment of a new importer or distributor for motor vehicles offered for sale under a franchise agreement described in subdivision (a)(2)(P)(i) of this section shall be deemed to be a change of an established plan or system of distribution;

(Q)(i)*(a)* Unless the manufacturer's, distributor's, second-stage manufacturer's, importer's, converter's, manufacturer's branch or division, or distributor's branch or division requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the

motor vehicle dealer's market and notwithstanding the terms of a franchise agreement or sales and service agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

(1) Change location of the dealership;

(2) Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or

(3) Replace a motor vehicle dealer's sales or service facilities.

(b) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving that changes, alterations, remodeling, or replacement to a motor vehicle dealer's sales or service facilities are reasonable and justifiable under this subchapter.

(ii)*(a)* However, a manufacturer, distributor, second-stage manufacturer, importer, convertor, manufacturer branch or division, or distributor branch or division, consistent with its allocation obligations at law and to its other same line make motor vehicle dealers, may provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line make dealers who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(b) Subdivisions (a)(2)(Q)(i) and (ii)*(a)* of this section do not require a manufacturer, distributor, second-stage manufacturer, importer, convertor, manufacturer branch or division, or distributor branch or division to provide financial support for or contribution to the purchase sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other purchases, sales, or relocations.

(c) A manufacturer, distributor, second-stage manufacturer, importer, convertor, manufacturer branch or division, or distributor branch or division shall not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement pursuant to subdivisions (a)(2)(Q)(i) and (ii)*(a)* of this section.

(d) This subdivision does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on July 27, 2011;

(R) To unreasonably withhold approval for a new motor vehicle dealer to purchase substantially similar goods and services related to facility changes, alterations, or remodels from vendors the dealer chooses;

(S) To require as a prerequisite to receiving a model or a series of vehicles a dealer to:

(i) Pay an extra fee or remodel, renovate, or recondition the dealer's existing facilities unless justified by the technological requirements for the sale or service of a vehicle;

(ii) Purchase unreasonable advertising displays, training, tools, or other materials;

(iii) Establish exclusive facilities; or

(iv) Establish dedicated personnel;

(T)(i)*(a)* To use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of this chapter or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law.

(b) An instrument contrary to this subdivision (a)(2)(T)(i) is void.

(c) However, this subdivision shall not apply to:

(1) Voluntary agreements in which separate and valuable consideration has been offered and accepted; or

(2) Settlement agreements entered into as a result of a dispute.

(ii)*(a)* Except as provided in subdivision (a)(2)(Q)(ii)*(b)* of this section, a manufacturer, distributor, or factory branch shall not directly or indirectly condition any of the following on the willingness of a motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement:

(1) Awarding a franchise to a prospective new motor vehicle dealer;

(2) Adding a line make or franchise to an existing motor vehicle dealer;

(3) Renewing a franchise of an existing motor vehicle dealer;

(4) Approving the relocation of an existing motor vehicle dealer's facility; or

(5) Approving the sale or transfer of the ownership of a franchise.

(b) This subdivision does not apply to a site control agreement or an exclusive use agreement if the site control agreement or an exclusive use agreement:

(1) Is voluntarily entered into by the motor vehicle dealer or the motor vehicle dealer's lessor;

(2) Clearly and conspicuously discloses that the site control agreement or an exclusive use agreement is voluntary; and

(3) Provides for separate and valuable consideration to the motor vehicle dealer or motor vehicle dealer's lessor.

(iii) Any provision contained in any agreement that is inconsistent with this subchapter is voidable at the election of the affected motor vehicle dealer or owner of an interest in the dealership facility; or

(U) To do any of the following:

(i) Fail to offer to all of its franchisees of the same line make any consumer rebates, dealer incentives, price or interest rate reduction, or finance terms that the franchisor offers or advertises;

(ii) Offer rebates, cash incentives, or other promotional items for the sale of a vehicle by its franchisees unless the same rebate, cash

incentive, or promotion is offered to all of its franchisees of the same line make, and any rebate, cash incentive, or promotion that is based on the sale of an individual vehicle is not increased for meeting a performance standard;

(iii) Unreasonably discriminate among its franchisees in any program that provides assistance to its franchisees, including Internet listings, sales leads, warranty policy adjustments, marketing programs, or dealer recognition programs;

(iv) Fail to offer rebates, cash incentives, or other promotional incentive programs on a fair and equitable or proportionally equivalent basis to its franchisees of the same line make; or

(v) Require a motor vehicle dealer to improve the dealer's facilities, including signs, or to replace factory required and approved facility improvements completed within the last seven (7) years to qualify for a new vehicle sales incentive program;

(3) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A) To own, operate, or control any motor vehicle dealer, provided that this subdivision (a)(3)(A) shall not be construed to prohibit the following:

(i) The operation by a manufacturer of a motor vehicle dealer for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

(ii) The ownership or control of a motor vehicle dealer by a manufacturer during a period in which the motor vehicle dealer is being sold under a bona fide contract or purchase option to the operator of the dealership;

(iii) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if:

(a) The manufacturer has been engaged in the retail sale of new motor vehicles at the location for a continuous period of five (5) years prior to January 1, 1999; and

(b) The commission determines after a hearing on the matter at the request of any party that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest;

(iv) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer, if the commission determines after a hearing on the matter at the request of any party, that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(v) The manufacturer is:

(a) A manufacturer of specialty vehicles, such as unassembled kits, and does not sell more than ten (10) assembled vehicles annually; or

(b) A custom motorcycle builder and does not sell more than five (5) assembled motorcycles annually;

(4)(A) For a manufacturer to unfairly compete with a motor vehicle dealer of the same line make, operating under a franchise, in the relevant market area.

(B) "Unfairly compete", as used in this section, includes, but is not limited to:

(i) Internet solicitations; and

(ii) Preferential treatment of manufacturer-operated dealerships in the supply of inventory, both as to quantity and availability of the latest models of that line make, supply of parts, and payments for warranty and recall claims.

(C) Ownership, operation, or control of a new motor vehicle dealer by a manufacturer under the conditions set forth in subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a violation of this subdivision (a)(4); or

(5)(A) To unreasonably reduce a motor vehicle dealer's area of sales effectiveness, trade area, or similar designation without giving a notice of at least thirty (30) days of the proposed reduction.

(B) The change shall not take effect if the dealer commences an administrative action to determine whether there is good cause for the change within the thirty-day notice period.

(C) The burden of proof in an action under this subdivision (a)(5) shall be on the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division to prove that good cause exists to change the motor vehicle dealer's area of sales effectiveness, trade area, or similar designation.

(b)(1) Notwithstanding the terms of any franchise except a settlement agreement voluntarily entered into, it shall be a violation for a motor vehicle franchiser to require a motor vehicle franchisee to agree to a term or condition in any franchise as a condition of the offer, grant, or renewal of the franchise or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, which:

(A) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchiser;

(B) Specifies the jurisdictions, venues, or tribunal in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution, or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under federal or state law;

(C) Requires a new motor vehicle dealer to pay the attorney's fees of a manufacturer, importer, second-stage manufacturer, converter, or distributor;

(D) Requires the motor vehicle franchisee to waive any remedy or defense available to the franchisee or other provision protecting the interests of the franchisee under this chapter; or

(E)(i) Requires that disputes between the motor vehicle franchiser and motor vehicle franchisee be submitted to binding arbitration or to any other binding alternative dispute resolution procedure provided by the franchiser.

(ii) However, any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternative dispute resolution if the motor vehicle franchiser and motor vehicle franchisee voluntarily agree to submit the dispute to binding arbitration or binding alternative dispute resolution after the dispute arises.

(iii) If the franchiser and franchisee agree to binding arbitration, the arbitrator shall apply the provisions of this chapter in resolving the pertinent controversy and shall provide the parties to a contract with a written explanation of the factual and legal basis for the award. Either party may appeal to the commission a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

(2) For the purposes of this section, it shall be presumed that a motor vehicle franchisee has been required to agree to a term or condition in violation of this section as a condition of the offer, grant, or renewal of a franchise or of any lease or agreement ancillary or collateral to a franchise, if the motor vehicle franchisee, at the time of the offer, grant, or renewal of the franchise, lease, or agreement or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, is not offered the option of an identical franchise, lease, or agreement without the terms or conditions prescribed by this section.

(c) Concerning any sale of a motor vehicle or vehicles to the State of Arkansas or to the several counties or municipalities thereof or to any other political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offers to all other of its dealers within the state. If the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the state.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 663, § 1; 1989, No. 65, §§ 4, 5; 1991, No. 411, § 4; 1991, No. 730, § 1; 1997, No. 1154, § 13; 1999, No. 1042, § 9; 2001, No. 1053, § 16; 2007, No. 746, §§ 3, 4; 2009, No. 756, §§ 13-15; 2011, No. 800, § 1; 2011, No. 1005, §§ 10-16; 2013, No. 561, § 6; 2013, No. 1043, §§ 6–8; 2013, No. 1133, §§ 9, 10.

Amendments. The 2009 amendment rewrote (a)(2)(C)(v) and (a)(2)(K)(ii), inserted (a)(2)(K)(ix), inserted "a sales and service agreement, or a bona fide contract" in (a)(2)(M), and made related and minor stylistic changes.

The 2011 amendment by No. 800 added (a)(3)(A)(v).

The 2011 amendment by No. 1005 deleted "duly" preceding "licensed motor vehicle dealer" in (a)(2)(A)(i); subdivided (a)(2)(B)(i), added the present introductory language, and inserted "motor vehicle" preceding "dealer" twice in (a)(2)(B)(i)*(b)*; added (a)(2)(C)(i)*(c)*; added the (a)(2)(C)(iv)*(a)* and *(b)* designations; inserted "as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq." in (a)(2)(C)(iv)*(b)*; added (a)(2)(C)(iv)*(c)*; added present (a)(2)(K)(vii) and redesignated former (a)(2)(K)(vii) through (ix) as present (a)(2)(K)(viii) through (x); added (a)(2)(Q) and (a)(5); and made stylistic changes.

The 2013 amendment by No. 561 substituted "seven (7) years to qualify" for "five (5) years in order to qualify" in (a)(2)(U)(v) (now (a)(2)(U)(i)*(e)*).

The 2013 amendment by No. 1043 deleted (a)(2)(C)(v)*(c)*, (a)(2)(K)(vii)(c), (a)(2)(Q)(iii), (a)(2)(R)(ii), (a)(2)(S)(ii),

(a)(2)(T)(iv) and (a)(2)(U)(iv) which referred to mobile homes.

The 2013 amendment by No. 1133 made redesignations throughout former (a)(2)(K); substituted "(a)(2)(K)(i)*(g)(2)*" for "(a)(2)(K)(vii)*(b)*" in present (a)(2)(K)(i)*(g)(1)*; in present (a)(2)(K)(i)*(i)*, inserted "*(a)*" following "(a)(2)(K)(i)" and substituted "(a)(2)(K)(i)*(b)* - *(g)*" for "(a)(2)(K)(ii) – (vii)"; redesignated former (a)(2)(U)(i) as present (a)(2)(U)*(a)*; inserted "To do any of the following" as the introductory language of (a)(2)(U); redesignated former (a)(2)(U)(ii) through (a)(2)(U)(v) as present (a)(2)(U)*(b)* through (a)(2)(U)*(e)*.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Contracts, 12 U. Ark. Little Rock L.J. 611.

Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

Annual Survey of Caselaw: Business Law, 27 U. Ark. Little Rock L. Rev. 593.

CASE NOTES

Analysis

Capital Structure.
New Dealer.
Termination.

Capital Structure.

Subdivision (a)(2)(H) of this section does not prohibit the manufacturer from requiring certain levels of working capital or investment under the franchise agreement. Zeno Buick-GMC, Inc. v. GMC Truck & Coach, 844 F. Supp. 1340 (E.D. Ark. 1992), aff'd without op., 9 F.3d 115 (8th Cir. 1993).

New Dealer.

Arkansas Motor Vehicle Commission exceeded the scope of its duty under subdivision (a)(2)(I) of this section and acted arbitrarily in substituting its own analysis for a manufacturer's evaluation of its generally applied criteria regarding whether a prospective buyer was qualified to buy a dealership. Ford Motor Co. v. Ark. Motor Vehicle Comm'n, 357 Ark. 125, 161 S.W.3d 788 (2004).

Termination.

The prohibition in subdivision (a)(2)(C) of this section goes to actual termination of the franchise rather than to constructive termination. Zeno Buick-GMC, Inc. v. GMC Truck & Coach, 844 F. Supp. 1340 (E.D. Ark. 1992), aff'd without op., 9 F.3d 115 (8th Cir. 1993).

Because the Arkansas Motor Vehicle Commission failed in its obligation to make sufficient findings of fact relevant to the contested issue of what constituted the current model year, the supreme court could not determine whether the Commission had resolved that issue in conformity with the law. Voltage Vehicles v. Arkansas Motor Vehicle Comm'n, 2012 Ark. 386, 424 S.W.3d 281 (2012).

Cited: Chrysler Motors Corp. v. Thomas Auto Co., 939 F.2d 538 (8th Cir. 1991).

23-112-404. Motor vehicle lessors.

It is unlawful for a motor vehicle lessor or any agent, employee, or representative thereof:

(1) To represent and to offer for sale or to sell as a new motor vehicle a motor vehicle that has been used or was intended to be used and operated for leasing or rental purposes or which is otherwise a used motor vehicle;

(2) To resort to, use, or employ any false, fraudulent, deceptive, or misleading advertising or representations in connection with the business of leasing or renting motor vehicles; or

(3) To sell or offer to sell a motor vehicle from an unlicensed location.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 2009, No. 756, § 16.

Amendments. The 2009 amendment deleted "or unused" following "new" in (1), and made minor stylistic changes.

23-112-405. [Repealed.]

Publisher's Notes. This section, concerning auto auctions, was repealed by Acts 1995, No. 568, § 12. The section was derived from Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305.

23-112-406. Acting as broker.

(a) Notwithstanding any other statute, a person may not act as, offer to act as, or hold himself or herself out to be a broker of new motor vehicles.

(b)(1) To effectuate this chapter, "arranges or offers to arrange a transaction" means soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration.

(2) "Arranges or offers to arrange a transaction" does not include advertising so long as the person's business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

(c) Brokering New Motor Vehicles.

(1) A buyer referral service, program, plan, club, or any other entity that accepts fees for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a fee to such an entity is aiding and abetting brokering. However, any service, plan, program, club, or other entity that forwards referrals to dealerships may lawfully operate if the following conditions are met:

(A) There are no exclusive market areas offered to dealers by the program and all dealers are allowed to participate on equal terms;

(B)(i) Participation by dealers in the program is not restricted by conditions such as limiting the number of franchise lines or discrimination by size of dealership or location.

(ii) Total number of participants in the program may be restricted if the program is offered to all dealers at the same time with no regard to the franchise;

(C) All participants pay the same fee for participation in the program and that shall be a weekly, monthly, or annual fee, regardless of the size, location, or line make of the dealership;

(D) A person is not to be charged a fee on a per-referral basis or any other basis that could be considered a transaction-related fee;

(E) The program does not set or suggest to the dealer or customer any price of vehicles or trade-ins; and

(F) The program does not advertise or promote its plan in the manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(2) All programs must comply with Regulation 1 of the Rules of the Arkansas Motor Vehicle Commission.

(d) The provisions of this section do not apply to any person or entity which is exempt from this chapter.

History. Acts 1975, No. 388, § 10; 1985, No. 1032, § 6; 1985, No. 1058, § 6; A.S.A. 1947, § 75-2310; Acts 2001, No. 1053, § 17; 2009, No. 756, § 17.

Amendments. The 2009 amendment subdivided (b), substituted "transaction" for "transition" in (b)(1), and made minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-112-407. [Repealed.]

Publisher's Notes. This section, concerning coercion, etc. of distributors, was repealed by Acts 1991, No. 890, § 4. The section was derived from Acts 1989, No. 65, § 6.

Subchapter 5 — Hearings and Appeals

SECTION.
23-112-501. Right to hearing.
23-112-502. Call for hearing.
23-112-503. Notice — Location of hearing.
23-112-504. Conduct of hearing.
23-112-505. Decisions and orders of commission — Quorum.
23-112-506. Appeals.
23-112-507. Exhaustion of remedies required — Exception.
23-112-508. Rules of order or procedure.
23-112-509. Summons, citation, and subpoena.

Effective Dates. Acts 1989, No. 65, § 11: Feb. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission Act does not adequately regulate the actions of certain importers and others who purchase motor vehicles for sale to distributors and that such regulations are needed to protect distributors and the public from unfair, discriminatory and coercive practices. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 678, § 7: Mar. 20, 1989. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that there is some question as to the ability of new car dealers in this state to meet the special order needs of their customers and therefore the availability and authority clarified and granted in this act is immediately necessary for the protection and preservation of the health, safety, and welfare of the people. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 383, § 9: Mar. 8, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to recent resignations of members, the Motor Vehicle Commission is unable to perform the duties assigned to it by law; that the consumer has not been adequately represented on the Commission; and that the changes in the membership and procedures of the Commission

provided for in this Act are necessary to prevent injury to the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 568, § 1: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain license fees charged by the Arkansas Motor Vehicle Commission need to be increased; that some of these fees are due on July 1 of each year; that unless this act is effective on July 1, 1995 those fees will not be increased; and that for the effective administration of this act an effective date of July 1, 1995 is necessary. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 1995."

Acts 1999, No. 1042, § 16: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of this act are of essential importance to correct the persistent unfair treatment of dealers by manufacturers of the same line, in matters such as manufacturers' systematic denial of dealers' warranty and recall claims, manufacturers' offering certain models to their franchised dealers on an arbitrary and unfair basis; that this act is essential to protect the stability and viability of these business owners in this state and the ability of consumers to purchase automobiles without undue interference from manufacturers; and other similar matters. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 756, § 25: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that motor vehicle dealers are experiencing economic difficulties related to the state of the national economy and the motor vehicle industry in particular; that an unprecedented number of motor vehicle dealers may terminate their franchises as a result of these economic conditions; and that this act is immediately necessary to assist dealers that are facing possible termination of their franchise. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-501. Right to hearing.

(a)(1) The Arkansas Motor Vehicle Commission may deny an application for a license if the application is considered inadequate after the initial review by the Executive Director of the Arkansas Motor Vehicle Commission.

(2) Within thirty (30) days after the executive director denies an application under subdivision (a)(1) of this section, the affected applicant may protest the executive director's decision and request a hearing before the commission.

(b) The commission shall not:

(1) Revoke or suspend a license without first giving the licensee a hearing or an opportunity to be heard on the question of whether there are sufficient grounds under this chapter upon which to base the revocation or suspension; or

(2) Impose a civil penalty pursuant to §§ 23-112-314 and 23-112-1020 without first giving the respondent a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1999, No. 1042, § 10; 2009, No. 756, § 18; 2013, No. 1043, § 9.

Amendments. The 2009 amendment rewrote and redesignated the section.

The 2013 amendment inserted "and 23-112-1020" in (b)(2).

23-112-502. Call for hearing.

(a) Any interested party may petition the Arkansas Motor Vehicle Commission to call a hearing for the purpose of taking action with respect to any matter within the commission's jurisdiction by filing with the commission a notarized complaint setting forth grounds upon which the complaint is based. Upon review of the complaint, the commission shall determine whether to call a hearing.

(b) On its own motion, the commission may call a hearing for the purpose of taking action in respect to any matter within its jurisdiction.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1989, No. 65, § 7; 1999, No. 1042, § 11.

CASE NOTES

Remedies.

Defendant's failure to seek a hearing before the Motor Vehicle Commission with respect to the Director's rejection of its application for a motor vehicle dealer license was clearly a failure to exhaust administrative remedies. Arkansas Motor Vehicle Comm'n v. Cantrell Marine, Inc., 305 Ark. 449, 808 S.W.2d 765 (1991).

23-112-503. Notice — Location of hearing.

(a) When a hearing is to be held before the Arkansas Motor Vehicle Commission, the commission shall give written notice to all parties whose rights may be affected thereby.

(b) The notice shall set forth the reason for the hearing, the questions or issues to be decided by the commission at the hearing, and the time and the place of the hearing.

(c) All notices shall be mailed to all parties whose rights may be affected by the hearing by registered or certified mail and addressed to their last known address.

(d) Any hearing shall be held in the county where the principal office of the commission is located unless both parties agree to an alternate location.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 2009, No. 756, § 19.

Amendments. The 2009 amendment rewrote (d).

23-112-504. Conduct of hearing.

All hearings shall be conducted pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1999, No. 1042, § 12.

23-112-505. Decisions and orders of commission — Quorum.

(a) All decisions of the Arkansas Motor Vehicle Commission with respect to the hearings provided for in this subchapter shall be incorporated into orders of the commission and spread upon its minutes.

(b) A majority of the members of the commission shall constitute a quorum for purposes of rendering an order, and no order will issue except upon the affirmative vote of a majority of the quorum of the members of the commission as established under § 23-112-201.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1989, No. 678, § 2; 1995, No. 568, § 11.

23-112-506. Appeals.

Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1993, No. 383, § 3.

CASE NOTES

Remedies.

State Supreme Court's decision that defendant did not exhaust its administrative remedies did not preclude defendant from following administrative procedure and, in the event of a ruling against it, an appeal to the circuit court. Arkansas Motor Vehicle Comm'n v. Cantrell Marine, Inc., 305 Ark. 449, 808 S.W.2d 765 (1991).

23-112-507. Exhaustion of remedies required — Exception.

No decision of the Arkansas Motor Vehicle Commission made as a result of a hearing under the provisions of this subchapter shall become final with respect to any party affected and aggrieved by the decision until the party has exhausted, or shall have had an opportunity to exhaust, all of his or her remedies provided for by this subchapter. However, any decision may be made final if the commission finds that failure to do so would be detrimental to the public interest or public welfare, but the finality of the decision shall not prevent any party

affected and aggrieved thereby to appeal the decision in accordance with the appellate procedure set forth in this subchapter.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307.

23-112-508. Rules of order or procedure.

(a) The Arkansas Motor Vehicle Commission shall prescribe its rules of order or procedure in hearings, or other proceedings before it, under this chapter.

(b) However, rules of order or procedure shall not be in conflict or contrary to the provisions of this subchapter.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307.

23-112-509. Summons, citation, and subpoena.

(a) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the Arkansas Motor Vehicle Commission, when so directed by the commission, to execute any summons, citation, or subpoena that the commission may cause to be issued and to make their return thereof to the commission.

(b)(1) The sheriffs and constables serving and returning any summons, citation, or subpoena shall be paid the same fees as provided for the services in the circuit court.

(2) Any person other than an employee of the commission who appears before the commission in response to a summons, citation, or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

(c)(1) In case of failure or refusal on the part of any person to comply with any summons, citation, or subpoena issued and served as authorized, or in the case of the refusal of any person to testify or answer to any matter regarding that which he or she may be lawfully interrogated, or the refusal of any person to produce his or her record books and accounts relating to any matter regarding that which he or she may be lawfully interrogated, the circuit court of any county of the State of Arkansas, on application of the commission or of the Executive Director of the Arkansas Motor Vehicle Commission, may:

(A) Issue an attachment for the person; and

(B) Compel the person to:

(i) Comply with the summons, citation, or subpoena;

(ii) Attend before the commission or its designated employee;

(iii) Produce the documents specified in any subpoena duces tecum; and

(iv) Give his or her testimony upon such matters as he or she may be lawfully required.

(2) Any circuit court shall have the power to punish for contempt as in the case of disobedience of like process issued from or by any circuit

court, or by refusal to testify therein in response to the process, and the person shall be taxed with the costs of the proceedings.

History. Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 2001, No. 1053, § 18; 2003, No. 1185, § 265; 2005, No. 1845, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

Subchapter 6 — Used Motor Vehicle Buyers Protection

SECTION.
23-112-601. Necessity for regulation — Legislative findings — Legislative declaration.
23-112-602. Definitions.
23-112-603. Penalty for violation and disbursal of fines.
23-112-604. Powers generally.
23-112-605. Violations.
23-112-606. License required.
23-112-607. Dealer's license.
23-112-608. License certificate fees.
23-112-609. Issuance of license certificate.
23-112-610. Display of dealer's license.
23-112-611. Records to be maintained.
23-112-612. [Repealed.]
23-112-613. Delivery prior to sale — Disclosures.
23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.
23-112-615, 23-112-616. [Repealed.]
23-112-617. Used motor vehicle dealer service and handling fee.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-5 may not apply to this subchapter which was enacted subsequently.

Publisher's Notes. Acts 1993, No. 490, § 19, provided: "Grandfather clause. All dealers holding used motor vehicle licenses pursuant to Arkansas Code Annotated §§ 23-112-601 through 23-112-604 on the effective date of this act shall be recognized as qualifying dealers hereunder until the expiration of their existing dealer licenses."

Former subchapter 6, concerning used motor vehicle dealers, was repealed by Acts 1993, No. 490, § 18. The former subchapter was derived from the following sources:

23-112-601. Acts 1989 (1st Ex. Sess.), No. 169, § 5.

23-112-602. Acts 1989 (1st Ex. Sess.), No. 169, § 5.

23-112-603. Acts 1989 (1st Ex. Sess.), No. 169, § 5.

23-112-604. Acts 1989 (1st Ex. Sess.), No. 169, § 5.

Effective Dates. Acts 1989 (1st Ex. Sess.), No. 169, § 9: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1999, No. 1040, § 5: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-sec-

ond General Assembly that it is in the best interests of the people of this state that used motor vehicle dealers be familar with current laws relating to licensing and regulation of such dealers; that at the present time, no such knowledge or education is required; that it is urgenlty needed and that this act should be given effect immediately to require such education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 366, § 5: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that currently a lawsuit is challenging the charging of documentary fees motor vehicle dealers as part of the sale of a motor vehicle; that the circuit court has found that the documentary fee which is a fee charged for the preparation of documents by the motor vehicle dealer is the unauthorized practice of law; and that this act is immediately necessary to prevent the ongoing problem and to prohibit motor vehicle dealers from charging documentary fees. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-112-601. Necessity for regulation — Legislative findings — Legislative declaration.

(a) The General Assembly declares that the public interest is affected by the sale and distribution of used motor vehicles, and it is recognized that a significant factor of the inducement in making a sale of a used motor vehicle to a member of the general public is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made, with the expectancy that the dealer will remain in business to stand behind and provide service for the motor vehicle purchased.

(b) It is therefore found to be necessary to license used motor vehicle dealers and to prohibit certain acts and set penalties for violations and perpetration of certain acts by used motor vehicle dealers who are not licensed as new motor vehicle dealers selling used cars incidental to their new motor vehicle dealership operations, salespersons, agents, representatives, and employees of used motor vehicle dealers in order to:

(1) Prevent fraud, improper impositions, and other abuses upon the citizens of this state;

(2) Protect and preserve the investments and properties of the citizens of this state; and

(3) Foster and keep alive vigorous and healthy competition by prohibiting unfair practices by which fair and honest competition is destroyed or prevented.

History. Acts 1993, No. 490, § 1.

CASE NOTES

Cited: Hankins v. McElroy, 313 Ark. 394, 855 S.W.2d 310 (1993).

23-112-602. Definitions.

As used in this subchapter:

(1)(A) "Auto auction" means any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, or from used motor vehicle dealers to individuals, or individuals to used motor vehicle dealers, or any combination thereof, or any motor vehicle dealer licensed to sell used motor vehicles, selling used motor vehicles using an auction format or on consignment.

(B) "Auto auction" also applies to any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(2) "Designee" means a person or entity that:

(A) Agrees to perform inspections of used motor vehicle dealers under this subchapter on behalf of the department; and

(B) The department determines is appropriately suited for serving as a designee under this subchapter;

(3) "Drafter" means any person who obtains financing for the purchase and resale of vehicles of another person or a used motor vehicle dealer through the use of the account of or based on the extension of credit by presenting at the time of purchase of the subject vehicles a documentary draft for purchase of the vehicle or who otherwise promises to pay through the accounts or credit of another person or a used motor vehicle dealer;

(4) "Licensed location" means the address designated as the business address of the used motor vehicle dealer on his or her application for a used motor vehicle dealer's license;

(5) "Motor vehicle" means any motor-driven vehicle having two (2) or more wheels of the sort and kind required to have an Arkansas motor vehicle license, certificate, or permit for operation in the State of Arkansas;

(6) "Off-premises" means a location other than the address designated as the licensed address;

(7) "Person" means and includes, individually and collectively, individuals, firms, partnerships, associations, corporations, trusts, or any other form of business, individual enterprise, or entity;

(8) "Sale" or "sell" means the actual sale of a motor vehicle, the attempted sale, or the offering or advertising of a motor vehicle for sale;

(9)(A) "Used motor vehicle" means any motor vehicle which has previously been sold, bargained, exchanged, given away, or the title thereto transferred from the person or corporation who first took title

from the manufacturer, importer, dealer, or agent of the manufacturer or importer, or that is so used as to have become what is commonly known as a secondhand or previously owned motor vehicle.

(B) In the event of a transfer reflected on the statement of origin from the original franchise dealer to any other dealer, individual, or corporation other than a franchise dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle;

(10)(A)(i) "Used motor vehicle dealer", hereinafter referred to as "dealer", means any person, wholesaler, or auto auction who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle, or who is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not such motor vehicles are owned by the person.

(ii) The sale or attempted sale of five (5) or more used motor vehicles in any one (1) calendar year shall be prima facie evidence and shall constitute a rebuttable presumption that a person is engaged in the business of selling used motor vehicles.

(B) "Used motor vehicle dealer" shall not include:

(i) A receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to a judgment or order of any court;

(ii) A public officer, while performing his or her official duties;

(iii) A mortgagee or secured party as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagee or secured leasing party shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by the mortgage or security agreement after consideration of the costs of collection;

(iv) A lienholder, artisan, mechanic, or garage selling repaired items pursuant to a lien granted by Arkansas law;

(v) A person selling a motor vehicle titled in his or her own name and used exclusively as a personal vehicle, or a motor vehicle titled in a business name and used exclusively as a business vehicle, or a person engaged in leasing or renting vehicles; or

(vi) A new motor vehicle dealer selling a used motor vehicle in conjunction with his or her new motor vehicle dealer operations who is licensed under this chapter;

(11) "Used motor vehicle salesperson", hereinafter referred to as "salesperson", is anyone who for compensation of any kind operates as a salesperson, broker, agent, or representative of a used motor vehicle dealer, or any person who attempts to or in fact negotiates a sale of a vehicle owned partially or entirely by a used motor vehicle dealer, or a person or drafter using the financial resources, line of credit, or floor plan of a used motor vehicle dealer to purchase, sell, or exchange an interest in a used motor vehicle; and

(12)(A) "Wholesaler" means any person, resident or nonresident, who, in whole or in part, primarily sells used motor vehicles to motor vehicle dealers.

(B) Used motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of their incidental sales.

History. Acts 1993, No. 490, § 2; 1995, No. 357, § 1; 2005, No. 1416, §§ 1, 2; 2005, No. 1780, § 1; 2011, No. 265, § 1.

Amendments. The 2011 amendment repealed (9).

23-112-603. Penalty for violation and disbursal of fines.

(a) In addition to any other penalty prescribed by existing laws, the penalties for violation of this subchapter and the disbursement of fines shall be as follows:

(1) A first violation of this subchapter by any person shall constitute a Class A misdemeanor;

(2) A second violation of this subchapter by any person shall constitute a Class D felony; and

(3) Conviction of a third or subsequent violation shall constitute a Class D felony, and the dealer's license shall be suspended for three (3) years for each respective third or subsequent violation.

(b) Any person found guilty of selling a used motor vehicle as a dealer or salesperson while his or her used motor vehicle dealer's or salesperson's license is suspended or revoked shall be guilty of a Class C felony.

(c)(1) If the arresting officer is an officer of the Department of Arkansas State Police, one-half (½) of the fine collected shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office, for deposit into the Department of Arkansas State Police Fund to be used for the purchase and maintenance of state police vehicles.

(2) If the arresting officer is a county law enforcement officer, one-half (½) of the fine collected shall be deposited into that county fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.

(3) If the arresting officer is a municipal law enforcement officer, one-half (½) of the fine collected shall be deposited into that municipal fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.

(d)(1) A used motor vehicle dealer licensed under this subchapter shall maintain a licensed location.

(2) When a used motor vehicle dealer changes or moves his or her licensed location, within fifteen (15) calendar days of the relocation, the

used motor vehicle dealer shall notify the department in writing of the dealership name, the previous location, and the new location.

(3)(A) If the department determines that the used motor vehicle dealer's business location has moved and notification to the department has not been properly made, the department shall levy a fine equal to the amount of the license fee.

(B) The fine collected pursuant to subdivision (d)(3)(A) of this section shall be remitted to the department and shall be deposited into the State Treasury as special revenue to the credit of the department.

History. Acts 1993, No. 490, § 12; 2001, No. 1408, § 1; 2003, No. 1765, § 30; 2005, No. 1416, § 3.

CASE NOTES

Administrative Remedy.

This section provides an aggrieved party holding a default judgment against a bonded principal with an administrative remedy for seeking payment under the bond — presentment of the default judgment to the Director of the Department of Finance and Administration; had the Department of Finance and Administration denied the request for payment under the bond, the judgment creditor could then have sought review of the Department of Finance and Administration actions by seeking judicial review in court since state agencies are subject to suit pursuant to § 16-60-103. Hankins v. McElroy, 313 Ark. 394, 855 S.W.2d 310 (1993).

23-112-604. Powers generally.

(a) The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer this subchapter.

(b) The department may cancel a dealer's license if the dealer:

(1) Fails to keep and maintain the requirements of § 23-112-607(a) and (c); or

(2) Pleads guilty or nolo contendere to or has been found guilty of a violation of § 23-112-605.

History. Acts 1993, No. 490, § 13; 2011, No. 201, § 1.

Amendments. The 2011 amendment substituted "may promulgate rules that" for "shall have the power to promulgate such rules and regulations as" in (a); and rewrote (b).

23-112-605. Violations.

It shall be a violation of this subchapter to knowingly or intentionally:

(1)(A) Sell a vehicle without a dealer's license.

(B) The sale of each vehicle shall constitute a separate offense;

(2) Commit a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles;

(3) Fail to maintain the conditions and requirements necessary to qualify for the issuance of a license;

(4) Sell, attempt to sell, or advertise for sale vehicles from a location other than that set forth on the dealer's license, except:

(A) As a participating dealer in a state trade association promotion or exhibit;

(B) With a special sale permit; or

(C) At an auto auction;

(5) Falsify, alter, or neglect to endorse or deliver a certificate of title to a transferee or lawful owner, or fail to properly designate a transferee on a document of assignment or certificate of title;

(6) Knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;

(7) Submit a false affidavit setting forth that a title has been lost or destroyed;

(8) Pass title or reassign title as a dealer without a dealer's license or when his or her dealer's license has been suspended;

(9) To represent oneself as a dealer or as a salesperson, either verbally or in any advertisement, when not licensed as such;

(10) Violate any provision or requirement in this subchapter; or

(11) Knowingly assist an unlicensed dealer in the sale of a motor vehicle.

History. Acts 1993, No. 490, § 11; 1995, No. 357, § 2.

23-112-606. License required.

It shall be unlawful for any person to engage in business as a used motor vehicle dealer or to sell a vehicle not his or her own without obtaining a used motor vehicle dealer's license, except that a person defined as a salesperson in § 23-112-602 may act on behalf of the dealer by whom such a person is employed.

History. Acts 1993, No. 490, § 3.

23-112-607. Dealer's license.

(a)(1) Persons wishing to obtain a used motor vehicle dealer's license shall submit a fully executed application on such used motor vehicle dealer application forms as may be prescribed by the Department of Arkansas State Police.

(2) The application shall be verified by the oath or affirmation of the applicant.

(b) An applicant for a used motor vehicle dealer's license or a licensee seeking to renew a used motor vehicle dealer's license shall establish that he or she has sold at least five (5) used motor vehicles during the previous calendar year.

(c) The department shall require in relation to the application the following information and verification prior to issuing a license certificate:

(1) A photograph of the business location;

(2) A corporate surety bond in the sum of at least twenty-five thousand dollars ($25,000);

(3) Proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.;

(4) A list of the persons or entities having any ownership interest in the used vehicle dealership;

(5) A list of salespersons to be employed;

(6) That the applicant has a bona fide established place of business used primarily for the sale of used motor vehicles;

(7) That the applicant has a telephone number listed in the name of the business;

(8) That the applicant has a sign identifying the establishment as a used motor vehicle dealership legible from the street, road, or highway, and a picture thereof;

(9) That the applicant has a filing cabinet or other repository adequate to secure the business records of the establishment under lock and key or combination;

(10) Whether the applicant has ever been issued a motor vehicle dealer's license, and if the applicant has ever had a motor vehicle dealer's license suspended or revoked;

(11)(A) Except as provided in subdivision (c)(11)(B) of this section, an affidavit from a department officer or a designee of the department stating that the officer or a designee of the department has inspected the facility within thirty (30) days before issuance or renewal of a license and found it to be in compliance with the requirements for application.

(B) If a licensee has been continuously licensed at the same facility for ten (10) years or more, then the licensee shall only be required to comply with subdivision (c)(11)(A) of this section one (1) time every other year; and

(12) The name, address, and telephone number of the person designated to receive legal process in the event of the commencement of any legal action in any court against the applicant.

(d)(1)(A) Each applicant shall obtain a corporate surety bond in the penal sum of twenty-five thousand dollars ($25,000) on a bond form approved by the state.

(B) However, an applicant for a license at multiple locations may provide a corporate surety bond in the penal sum of one hundred thousand dollars ($100,000) covering all licensed locations in lieu of separate bonds for each individual location.

(2) The bond shall be an indemnity for any loss and reasonable attorney's fees sustained by a retail buyer by reason of the acts of the person bonded when such an act constitutes a violation of this law.

(3) However, the surety shall in no event be liable for more than twenty-five thousand dollars ($25,000).

(4) The bond shall be executed in the name of the State of Arkansas or any aggrieved party.

(5) The proceeds of the bonds shall be paid either to the State of Arkansas or to the retail buyer upon a judgment from an Arkansas court of competent jurisdiction against the principal and in favor of the aggrieved party or the State of Arkansas.

(6) However, the surety shall in no event be required to pay any judgment obtained by fraud or collusion, as between the dealer and the retail buyer, or which was rendered against a person bonded for an act that does not constitute a violation of this subchapter. These defenses may be raised at any time, subject to the applicable statute of limitations.

History. Acts 1993, No. 490, §§ 4, 6; 1997, No. 705, § 1; 1999, No. 1040, § 1; 2001, No. 93, § 1; 2005, No. 1416, § 4.

Publisher's Notes. Acts 1993, No. 490, § 7, provided: "All bonds posted by presently licensed used motor vehicle dealers under Act 1058 of 1985 or Act 169 of 1989 (1st Extraordinary Session) shall be an indemnity for loss sustained by retail buyers only; and the proceeds shall be due and payable upon receipt by the Director of the Department of Finance and Administration of a final judgement from an Arkansas court of competent jurisdiction against the principal and in favor of an aggrieved retail buyer."

23-112-608. License certificate fees.

(a)(1) The fee for a license certificate shall be two hundred fifty dollars ($250) per year for each used motor vehicle dealer licensed.

(2)(A) The fee shall be for the licensing period beginning on January 1 of each year and ending on December 31 of each year and shall be renewable during the month of January following its expiration, unless the Department of Arkansas State Police provides by rule a staggered method of annual renewal.

(B)(i) If a license certificate has been expired for at least thirty-one (31) days but less than six (6) months, then the used motor vehicle dealer shall remit a late fee of thirty-five dollars ($35.00) before the used motor vehicle dealer's application shall be accepted.

(ii)*(a)* A license that is not renewed within six (6) months of its expiration date shall be deemed permanently expired.

(b) If a used motor vehicle dealer's license has permanently expired, then the used motor vehicle dealer may reapply for licensure, provided that the used motor vehicle dealer completes an application for licensure and remits all fees pursuant to this section.

(3) A dealer having more than one (1) location will receive an additional certificate for each second and subsequent location for one hundred twenty-five dollars ($125) each.

(b) Only used motor vehicle dealers licensed under this section shall qualify for used motor vehicle dealer's license plates from the Department of Finance and Administration.

(c) All fees for the issuance of a license certificate under the provisions of this section shall be remitted to the Department of Arkansas State Police and shall be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

History. Acts 1993, No. 490, § 5; 2005, No. 1416, § 5.

23-112-609. Issuance of license certificate.

Upon satisfactory submission and verification of a fully executed application as required by § 23-112-607(a) and (b), payment of the fee provided for by § 23-112-608, and receipt of the corporate surety bond as required by § 23-112-607(c), the Department of Arkansas State Police shall issue the applicant a license certificate.

History. Acts 1993, No. 490, § 8.

23-112-610. Display of dealer's license.

(a) Each dealer licensed under this subchapter shall maintain for display, in a conspicuous place at the dealer's business location, the license certificate issued by the Department of Arkansas State Police.

(b)(1) Each dealer shall also have his or her used motor vehicle dealer's license name conspicuously displayed on all signage.

(2) All printed advertisements shall contain the dealer's name or the words "AR DLR" with the Department of Arkansas State Police dealer's license number assigned to the dealer.

History. Acts 1993, No. 490, § 9; 1995, No. 357, § 3.

23-112-611. Records to be maintained.

(a) Every person required to have a license shall maintain, for three (3) years from the date of purchase, records of each vehicle transaction to which the person was a party.

(b) Dealers shall maintain copies of all documents executed in conjunction with any transaction, which may include bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection to any Department of Arkansas State Police officer or designated employee of the department acting in an official capacity during reasonable business hours.

History. Acts 1993, No. 490, § 10; 1995, No. 357, § 4; 2011, No. 201, § 2.

Amendments. The 2011 amendment inserted "or designated employee of the department" in (b).

23-112-612. [Repealed.]

Publisher's Notes. This section, concerning used motor vehicle dealer documentary fees and disclosures, was repealed by Acts 2007, No. 366, § 4. The section was derived from Acts 2001, No. 1600, § 2.

23-112-613. Delivery prior to sale — Disclosures.

(a) As used in this section:

(1)(A) "Contract for sale" means the final agreement between a used motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financer.

(B) "Contract for sale" includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) "Delivery prior to sale" means a delivery of a motor vehicle by a used motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a used motor vehicle dealer engages in a delivery prior to sale, then the used motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the used motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the used motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The used motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed-upon interest rate;

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The used motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer; and

(B) The used motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and

(4) If the consumer decides not to purchase the motor vehicle, the consumer shall return the motor vehicle to the used motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the used motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Department of Arkansas State Police shall promulgate rules and regulations to implement, enforce, and administer this section.

History. Acts 2005, No. 1687, § 2.

23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.

(a) A five-dollar ($5.00) fee shall be charged to the buyer of each item at an auto auction that is sold on a certificate of title that is labeled "salvage" or "parts-only".

(b) The fee is special revenue and shall be deposited into the State Treasury.

(c) The Treasurer of State shall transfer the special revenues received under this section on the last business day of each month as follows:

(1) Fifty percent (50%) for the Arkansas Department of Environmental Quality to be used for inspection and oversight of auto auctions to enforce all laws and rules administered by the Arkansas Department of Environmental Quality; and

(2) Fifty percent (50%) for the Department of Arkansas State Police to be used for inspection and oversight of auto auctions.

History. Acts 2005, No. 1780, § 2; 2007, No. 827, § 191; 2009, No. 639, § 1; 2011, No. 265, § 2.

Amendments. The 2009 amendment, in (b)(5), inserted (b)(5)(A), redesignated the remaining text, and made related changes.

The 2011 amendment rewrote the section.

23-112-615, 23-112-616. [Repealed.]

Publisher's Notes. These sections, prohibited activities of salvage auction owners and operators and participation in salvage auctions by dealers from other states, were repealed by Acts 2011, No. 265, § 3. They were derived from the following source:

23-112-615. Acts 2005, No. 1780, § 2.

23-112-616. Acts 2005, No. 1780, § 2.

23-112-617. Used motor vehicle dealer service and handling fee.

(a) A used motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of used motor vehicles if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b)(1) A used motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a used motor vehicle for:

(A) The handling, processing, and storage of documents; and

(B) Other administrative and clerical services.

(2)(A) The service and handling fee may be charged to allow cost recovery for used motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the used motor vehicle dealer.

(c)(1) The Department of Arkansas State Police shall determine by rule the amount of the service and handling fee that may be charged by a used motor vehicle dealer. The service and handling fee shall be no less than zero dollars ($0.00) and no more than one hundred twenty-nine dollars ($129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

(A) Charged to all retail customers; and

(B) Disclosed on the retail buyer's order form as a separate itemized charge.

(d) A preliminary work sheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

(1) The amount of the service and handling fee; and

(2) The following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW."

(e) The Department of Arkansas State Police may promulgate rules to implement, enforce, and administer this section.

History. Acts 2007, No. 366, § 2.

Subchapter 7 — Damage to Motor Vehicles While in Transit

SECTION.
23-112-701. When delivery accomplished.
23-112-702. Damage prior to delivery to dealer — Notice.
23-112-703. Failure to repair.
23-112-704. Computing time.
23-112-705. Disclosure of damage to consumer — Certification.
23-112-706. Damage after delivery to dealer — Disclosure to consumer — Certification.
23-112-707. Manufacturer required to indemnify franchised dealers.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-5 may not apply to this subchapter which was enacted subsequently.

23-112-701. When delivery accomplished.

"Delivery" of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:

(1) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer's place of business or designated place of delivery; and

(2) Giving of notice of the tender of the motor vehicle and documents to the dealer.

History. Acts 1991, No. 952, § 1.

23-112-702. Damage prior to delivery to dealer — Notice.

(a) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

(1) Notify the manufacturer or distributor of such damage within three (3) working days of the occurrence of the delivery of the motor vehicle; and

(2) Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(b) The notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.

History. Acts 1991, No. 952, § 2.

23-112-703. Failure to repair.

In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for the damage to the motor vehicle. In determining when the notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.

History. Acts 1991, No. 952, § 3.

23-112-704. Computing time.

In computing the lapse of three (3) working days under this subchapter, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in § 23-112-703, is not to be included, but the last working day of the period so computed is to be included.

History. Acts 1991, No. 952, § 4.

23-112-705. Disclosure of damage to consumer — Certification.

(a) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in § 23-112-702, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer's original equipment, and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of such damage must be disclosed by the dealer to the consumer, and, upon repair of the damage sustained, or replacement of the parts or accessories damaged, the manufacturer or dealer must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer's standards.

(b)(1) If the dealer makes the certification, the dealer shall be indemnified by the manufacturer.

(2) Upon such certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.

History. Acts 1991, No. 952, § 5.

23-112-706. Damage after delivery to dealer — Disclosure to consumer — Certification.

(a) Whenever a motor vehicle is damaged after delivery to the dealer by the manufacturer or distributor but before sale by the dealer to the consumer, and the occurrence and extent of such damage is in excess of

six percent (6%) of the sticker price of the vehicle, it must be disclosed by the dealer to the consumer prior to the sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards.

(b) Upon such certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.

History. Acts 1991, No. 952, § 6.

23-112-707. Manufacturer required to indemnify franchised dealers.

Notwithstanding the terms of any franchise agreement, it shall be a violation of this subchapter for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorney's fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or warranty to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories, or other functions by the manufacturer, beyond the control of the dealer.

History. Acts 1991, No. 952, § 7.

Subchapter 8 — Special Motorcycle Events

SECTION.
23-112-801. Findings.
23-112-802. Definitions.
23-112-803. Statements of estimated positive economic impact.
23-112-804. Significant positive economic impact determinations.
23-112-805. Authority to waive relevant market area and rules.
23-112-806. Established and ongoing special motorcycle events.

23-112-801. Findings.

The General Assembly finds that:

(1) A special motorcycle event sponsored by a city, county, nonprofit entity, or motorcycle owners' organization draws people from all over the state, other states, and even other countries;

(2) A special motorcycle event can provide a valuable increase in tourism for the state; and

(3) The laws and rules related to the display and sale of motorcycles at a special motorcycle event must be modified to lessen the restrictions that are hampering economic growth.

History. Acts 2007, No. 235, § 1.

23-112-802. Definitions.

As used in this subchapter:

(1) "Motorcycle owners' organization" means an entity that is organized as a nonprofit entity or for-profit entity and in good standing with the Secretary of State;

(2) "Nonprofit entity" means an entity that has received tax-exempt status from the Internal Revenue Service pursuant to section 501(c)(3) or section (501)(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(c)(4), as they existed on January 1, 2007;

(3) "Public venue" means a location that:

(A) Is open to the general public; and

(B) Is not the address designated as the primary business address of a new motor vehicle dealer licensed by the Arkansas Motor Vehicle Commission or a used motor vehicle dealer licensed by the Department of Arkansas State Police;

(4) "Significant positive economic impact" means an economic benefit of at least three million dollars ($3,000,000) to the state or a region of the state; and

(5) "Special motorcycle event" means an event held at a public venue with or without an admission fee that:

(A) Is sponsored by a city, a county, a nonprofit entity, or a motorcycle owners' organization;

(B) Occurs not more than one (1) time each year for no more than seven (7) consecutive days; and

(C) Includes any of the following that are invited to attend:

(i) New motor vehicle dealers to display and sell motorcycles; or

(ii) New motor vehicle manufacturers or distributors to display motorcycles.

History. Acts 2007, No. 235, § 1.

23-112-803. Statements of estimated positive economic impact.

A statement of the estimated positive economic impact of a proposed special motorcycle event shall be submitted to the Arkansas Motor Vehicle Commission from an independent source such as a university, chamber of commerce, or other entity that regularly engages in the estimation of the economic benefit of an occurrence for businesses and industries.

History. Acts 2007, No. 235, § 1.

23-112-804. Significant positive economic impact determinations.

(a) If the statement of estimated positive economic impact that is submitted to the Arkansas Motor Vehicle Commission establishes that a special motorcycle event has a significant positive economic impact,

the special motorcycle event is exempt from regulation by the commission as provided under § 23-112-805.

(b) If the statement of estimated positive economic impact that is presented to the commission establishes that a special motorcycle event will not have a significant positive economic impact, then the commission shall determine whether the special motorcycle event is exempt from the provisions of this chapter and any rules promulgated by the commission.

History. Acts 2007, No. 235, § 1.

23-112-805. Authority to waive relevant market area and rules.

(a) The Arkansas Motor Vehicle Commission shall waive the following for a special motorcycle event that has a significant positive economic impact or is determined by the commission to otherwise qualify for an exemption under § 23-112-804(b) if no franchised motor vehicle dealer of a licensed manufacturer is represented in the host county of the special motorcycle event or the counties contiguous to the host county:

(1) The provisions of this chapter regarding relevant market area; and

(2) The rules regarding motor vehicle dealers in contiguous counties.

(b)(1) The commission may promulgate rules for the issuance of a temporary permit to out-of-state motor vehicle dealers and manufacturers to participate in a special motorcycle event under this subchapter.

(2) No rule shall be promulgated that puts a greater burden on out-of-state motor vehicle dealers and manufacturers to obtain a temporary permit than the requirements necessary for a motor vehicle dealer or manufacturer to obtain a license from the commission.

(3) If the commission establishes fees for a temporary permit under this subsection, the fees shall not exceed:

(A) For an out-of-state motor vehicle dealer, one hundred dollars ($100);

(B) For a manufacturer or distributor, two hundred fifty dollars ($250);

(C) For an out-of-state salesperson, fifteen dollars ($15.00); and

(D) For a factory representative or distributor representative, fifty dollars ($50.00).

History. Acts 2007, No. 235, § 1.

23-112-806. Established and ongoing special motorcycle events.

(a) A special motorcycle event that has been ongoing for five (5) years or more before July 31, 2007, and has had a significant positive economic impact in the past shall be:

(1) Considered an established and ongoing special motorcycle event; and

(2) Eligible to a presumption of a significant positive economic impact by the Arkansas Motor Vehicle Commission.

(b) Notwithstanding any provision of law to the contrary, an established and ongoing special motorcycle event under this section may continue to invite motor vehicle dealers and manufacturers that have participated in the special motorcycle event for the previous three (3) years.

History. Acts 2007, No. 235, § 1.

Subchapter 9 — Recreational Vehicle Special Events

SECTION.
23-112-901. Findings.
23-112-902. Definitions.
23-112-903. Statements of estimated positive economic impact.
23-112-904. Significant positive economic impact determinations.
23-112-905. Authority to waive relevant market area and rules.

23-112-901. Findings.

The General Assembly finds that:

(1) A recreational vehicle special event sponsored by a city, county, nonprofit entity, or recreational vehicle owners' organization draws people from all over the state and other states;

(2) A recreational vehicle special event can provide a valuable increase in tourism for the state; and

(3) The laws and rules related to the display and sale of recreational vehicles at a recreational vehicle special event must be modified to lessen the restrictions that are hampering economic growth.

History. Acts 2011, No. 263, § 1.

23-112-902. Definitions.

As used in this subchapter:

(1) "Nonprofit entity" means an entity that has received tax exempt status from the Internal Revenue Service under section 501(c)(3) or section (501)(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(c)(4), as they existed on January 1, 2011;

(2) "Public venue" means a location that:

(A) Is open to the general public; and

(B) Is not the address designated as the primary business address of a new motor vehicle dealer licensed by the Arkansas Motor Vehicle Commission or a used motor vehicle dealer licensed by the Department of Arkansas State Police;

(3) "Recreational vehicle owners' organization" means an entity that is organized as a nonprofit entity or for-profit entity and in good standing with the Secretary of State;

(4) "Recreational vehicle special event" means an event held at a public venue with or without an admission fee that:

(A) Is sponsored by a city, a county, a nonprofit entity, or a recreational vehicle owners' organization;

(B) Occurs for no more than seven (7) consecutive days; and

(C) Includes any of the following that are invited to attend:

(i) New recreational vehicle dealers to display and sell recreational vehicles; or

(ii) New recreational vehicle manufacturers or distributors to display recreational vehicles; and

(5) "Significant positive economic impact" means an economic benefit of at least two million dollars ($2,000,000) to the state or a region of the state.

History. Acts 2011, No. 263, § 1.

23-112-903. Statements of estimated positive economic impact.

A statement of the estimated positive economic impact of a proposed recreational vehicle special event shall be submitted to the Arkansas Motor Vehicle Commission from an independent source such as a university, chamber of commerce, or other entity that regularly engages in the estimation of the economic benefit of an occurrence for businesses and industries.

History. Acts 2011, No. 263, § 1.

23-112-904. Significant positive economic impact determinations.

(a) If the statement of estimated positive economic impact that is submitted to the Arkansas Motor Vehicle Commission establishes that a recreational vehicle special event has a significant positive economic impact, the recreational vehicle special event is exempt from regulation by the commission as provided under § 23-112-905.

(b) If the statement of estimated positive economic impact that is presented to the commission establishes that a recreational vehicle special event will not have a significant positive economic impact, then the commission shall determine whether the recreational vehicle special event is exempt from this chapter and any rules promulgated by the commission.

History. Acts 2011, No. 263, § 1.

23-112-905. Authority to waive relevant market area and rules.

(a) The Arkansas Motor Vehicle Commission shall waive the following for a recreational vehicle special event that has a significant positive economic impact or is determined by the commission to otherwise qualify for an exemption under § 23-112-904(b) if no franchised motor vehicle dealer of a licensed manufacturer is represented in

the host county of the recreational vehicle special event or the counties contiguous to the host county:

(1) The provisions of this chapter regarding relevant market area; and

(2) The rules regarding motor vehicle dealers in contiguous counties.

(b)(1) The commission may promulgate rules for the issuance of a temporary permit to out-of-state motor vehicle dealers and manufacturers to participate in a recreational vehicle special event under this subchapter.

(2) The commission shall not promulgate a rule that puts a greater burden on out-of-state motor vehicle dealers and manufacturers to obtain a temporary permit than the requirements necessary for a motor vehicle dealer or manufacturer to obtain a license from the commission.

(3) If the commission establishes fees for a temporary permit under this subsection, the fees shall not exceed:

(A) For an out-of-state motor vehicle dealer, one hundred dollars ($100);

(B) For a manufacturer or distributor, two hundred fifty dollars ($250);

(C) For an out-of-state salesperson, fifteen dollars ($15.00); and

(D) For a factory representative or distributor representative, fifty dollars ($50.00).

History. Acts 2011, No. 263, § 1.

Subchapter 10 — Recreational Vehicle Franchise Act

SECTION.
23-112-1001. Title.
23-112-1002. Legislative findings.
23-112-1003. Definitions.
23-112-1004. License requirements and application fees.
23-112-1005. Application for license.
23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, and distributors.
23-112-1007. Display of license — Change of employer — Factory representative and distributor representative.
23-112-1008. Display of license — Change of employer — Salesperson.
23-112-1009. Expiration of license.
23-112-1010. Area of sales responsibility.
23-112-1011. Renewal of dealer agreement.
23-112-1012. Termination, cancellation, or nonrenewal of dealer agreement.
23-112-1013. Repurchase of inventory.
23-112-1014. Sale of remaining inventory after termination.
23-112-1015. Change of ownership of dealer — Family succession.
23-112-1016. Warranty obligation.
23-112-1017. Damage to recreational vehicles before arrival at dealership.
23-112-1018. Prohibited activity of manufacturer or distributor — Coercion.
23-112-1019. License — Denial, revocation, and suspension.
23-112-1020. Monetary penalty in lieu of suspension or revocation of license — Civil penalty.
23-112-1021. Enforcement.
23-112-1022. Civil action and mediation.
23-112-1023. Injunction.

Effective Dates. Acts 2013, No. 1043, § 11: Jan. 1, 2014.

23-112-1001. Title.

This subchapter shall be known and may be cited as the "Recreational Vehicle Franchise Act".

History. Acts 2013, No. 1043, § 10.

23-112-1002. Legislative findings.

The General Assembly finds that:

(1) The distribution and sale of recreational vehicles vitally affects the general economy, the public interest, and the public welfare; and

(2) It is necessary, in the exercise of the General Assembly's police power, to regulate and to license recreational vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, dealers, and salespersons doing business in Arkansas to:

(A) Prevent fraud, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;

(B) Foster and keep alive vigorous and healthy competition;

(C) Prevent the creation or perpetuation of monopolies;

(D) Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a recreational vehicle dealer or the ultimate purchaser;

(E) Prevent false and misleading advertising;

(F) Promote and keep alive a sound system of distribution of recreational vehicles to the public; and

(G) Promote the public safety and welfare.

History. Acts 2013, No. 1043, § 10.

23-112-1003. Definitions.

As used in this subchapter:

(1) "Area of sales responsibility" means the geographical area agreed to by the dealer and the manufacturer or distributor in a dealer agreement where the dealer has the exclusive right to display or sell the manufacturer or distributor's new recreational vehicles of a particular line-make to the retail public;

(2) "Dealer" means a person, firm, corporation, or business entity that is:

(A) Engaged in the business of selling or offering to sell, selling and servicing, soliciting, or advertising the selling or selling and servicing of recreational vehicles under a manufacturer's warranty; and

(B) Located at an established and permanent place of business under a dealer agreement;

(3) "Dealer agreement" means a written agreement, contract, franchise agreement, or sales and service agreement that:

(A) Is entered into between a manufacturer or distributor and a dealer;

(B) Establishes the rights, responsibilities, and obligations of the manufacturer or distributor and a dealer; and

(C) Authorizes the dealer to sell new recreational vehicles;

(4) "Distributor" means a person, firm, corporation, or business entity that purchases new recreational vehicles for resale to dealers;

(5) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers to address a part or equipment issue;

(6) "Factory representative" means a representative employed by a person, firm, association, corporation, or trust that manufactures, assembles, or distributes new recreational vehicles;

(7) "Family member" means:

(A) A spouse;

(B) A child, grandchild, parent, sibling, niece, or nephew; or

(C) The spouse of a child, grandchild, parent, sibling, niece, or nephew;

(8) "Fifth wheel travel trailer" means a recreational vehicle designed to be towed by a motorized vehicle by means of a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;

(9) "Folding camping trailer" means a recreational vehicle designed to be towed by a motorized vehicle that is constructed with partially collapsible side walls that fold for travel and unfold and extend in the set-up mode;

(10) "Line-make" means a specific series of recreational vehicle products that:

(A) Are identified by a common series trade name or trademark;

(B) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(C) Have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(D) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(E) The dealer agreement authorizes a dealer to sell;

(11) "Manufacturer" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles;

(12) "Motor home" means a recreational vehicle built on a self-propelled motor vehicle chassis that contains at least four (4) of the following permanently installed independent life support systems:

(A) A cooking facility with an on-board fuel source;

(B) A potable water supply system that includes at least a sink, faucet, and water tank with an exterior service supply connection;

(C) A toilet with exterior evacuation;

(D) A gas or electric refrigerator;

(E) A heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine; or

(F) An electric power supply of one hundred ten to one hundred twenty-five volts (110-125 V);

(13) "Person" means, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise or other legal entity;

(14) "Proprietary part" means a recreational vehicle part:

(A) Manufactured by or for a manufacturer; and

(B) Sold exclusively by the manufacturer;

(15) "Recreational vehicle":

(A) Means a vehicle that:

(i) Has its own motor power or is towed by another vehicle;

(ii) Is primarily designed as a temporary living quarters for noncommercial recreation or camping use;

(iii) Complies with all applicable federal vehicle regulations as existing on January 1, 2013; and

(iv) Does not require a special-movement permit to legally use the highways; and

(B) Includes without limitation a:

(i) Motor home;

(ii) Travel trailer;

(iii) Fifth wheel travel trailer; and

(iv) Folding camping trailer;

(16) "Recreational vehicle salesperson" means a person who:

(A) Is employed by a dealer as a salesperson whose duties include the selling or offering for sale of recreational vehicles;

(B) For compensation of any kind acts as a salesperson, agent, or representative of a dealer;

(C) Attempts to or in fact negotiates a sale of a recreational vehicle owned partially or entirely by a dealer; and

(D) Uses the financial resources, line of credit, or floor plan of a dealer to purchase, sell, or exchange an interest in a recreational vehicle;

(17) "Supplier" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories, or components;

(18) "Transient customer" means a person who:

(A) Owns a recreational vehicle;

(B) Is temporarily traveling through a dealer's area of sales responsibility;

(C) Engages a dealer to perform service work on that recreational vehicle; and

(D) Requires repairs that relate to the safe operation of that recreational vehicle that if not undertaken are of a nature that would render that recreational vehicle unusable for its intended purpose;

(19) "Travel trailer" means a recreational vehicle designed to be towed by a motorized vehicle; and

(20)(A) "Warrantor" means a person, firm, corporation, or business entity, including without limitation a manufacturer or supplier, that provides a written warranty to the consumer in connection with a new recreational vehicle or accessories, parts, or components of a new recreational vehicle.

(B) "Warrantor" does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

History. Acts 2013, No. 1043, § 10.

23-112-1004. License requirements and application fees.

(a) The following acts are unlawful:

(1) The violation of any of the provisions of this subchapter;

(2) Engaging in the business as, serving in the capacity of, or acting as a new recreational vehicle dealer, recreational vehicle salesperson, recreational vehicle manufacturer, recreational vehicle distributor, recreational vehicle factory representative, or recreational vehicle manufacturer representative in this state without first obtaining a license as provided in this subchapter; or

(3) Offering to sell or selling a recreational vehicle to a consumer except through a licensed new recreational vehicle dealer holding a dealer agreement for the line-make covering the new recreational vehicle or as may otherwise be provided in § 23-112-403(a)(3).

(b) A person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of the capacities under subdivision (a)(2) of this section or having more than one (1) place where one (1) or more of the actions under subdivision (a)(2) of this section is carried on or conducted shall obtain and hold a separate and current license for each capacity and place of business.

(c)(1) A person shall not engage in the business of buying, selling, or exchanging new recreational vehicles unless the person:

(A) Holds a valid license issued by the Arkansas Motor Vehicle Commission for the make of recreational vehicles being bought, sold, or exchanged; or

(B) Is a bona fide employee or agent of the licensee.

(2) As used in this subsection, "engage in the business of buying, selling, or exchanging recreational vehicles" means:

(A) Displaying for sale new recreational vehicles on a lot or in a showroom;

(B) Advertising for sale new recreational vehicles regardless of the medium used; or

(C) Regularly or actively soliciting buyers for new recreational vehicles.

(d)(1) An application for a license shall be accompanied by the appropriate fees in accordance with the schedule under this subchapter.

(2) If an application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

(3) The license fees to be charged and received by the commission for the licenses issued under this subchapter shall be as follows:

(A) For each manufacturer, distributor, factory branch and division, or distributor branch and division, nine hundred dollars ($900);

(B) For each manufacturer, distributor, or factory representative, four hundred dollars ($400);

(C) For each recreational vehicle dealer, one hundred dollars ($100);

(D) For each recreational vehicle salesperson, fifteen dollars ($15.00);

(E) For each branch location, twenty-five dollars ($25.00); and

(F) For each replacement certificate of license, ten dollars ($10.00).

(4)(A)(i) A person, firm, or corporation required to be licensed under this subchapter that fails to make application for the license at the time required shall pay a penalty of fifty percent (50%) of the amount of the license fee for each thirty (30) days of default, in addition to the fees required to be paid under this subsection.

(ii) The penalty under subdivision (d)(4)(A)(i) of this section may be waived, in whole or in part, within the discretion of the commission.

(B) A license application for sales personnel shall be received in the commission office within thirty (30) days of employment.

History. Acts 2013, No. 1043, § 10.

23-112-1005. Application for license.

(a) An application for a license required under this subchapter shall:

(1) Be verified by the oath or affirmation of the applicant;

(2) Be on a form prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicant; and

(3) Contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant to receive the license applied for.

(b) The commission shall require that there be set forth in each application:

(1) Information relating to:

(A) The applicant's business integrity;

(B) Whether the applicant has an established place of business in the State of Arkansas and is primarily engaged in the pursuit, avocation, or business for which the license is applied for; and

(C) Whether the applicant has the proper facilities and is able to properly conduct the business for which the license is applied for; and

(2) Other pertinent information consistent with the safeguarding of the public interest and public welfare.

(c)(1)(A) In addition to the provisions of subsections (a) and (b) of this section, an application for a license as a new recreational vehicle

dealer shall be accompanied by the filing with the commission of a corporate surety bond in the penal sum of fifty thousand dollars ($50,000) on a bond form approved by the commission.

(B) In each instance that a branch license is applied for, each application shall be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars ($25,000) on a bond form approved by the commission.

(2) The bond shall be in effect upon the applicant's being licensed and shall be conditioned upon the applicant's complying with this subchapter.

(3) The bond shall be an indemnity for any loss sustained by any person by reason of the acts of the person bonded when those acts constitute grounds for the suspension or revocation of his or her license.

(4) The bond shall be executed in the name of the State of Arkansas for the benefit of any aggrieved party.

(5) The aggregate liability of the surety for all claimants, regardless of the number of years the bond is in force or has been in effect, shall not exceed the amount of the bond.

(6) The proceeds of the bond shall be paid upon receipt by the commission of a final judgment from an Arkansas court of competent jurisdiction against the principal and in favor of an aggrieved party.

(d) A recreational vehicle dealer shall provide proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

(e)(1) In addition to the provisions of subsections (a)-(d) of this section, an application for a license as a recreational vehicle dealer shall also be accompanied by the filing with the commission of a dealer agreement then in effect between the applicant and a manufacturer or distributor of the new recreational vehicles proposed to be dealt in.

(2) However, if the dealer agreement has already been filed with the commission in connection with a previous application made by the applicant, the applicant, in lieu of again filing the dealer agreement, shall identify the contract or franchise by appropriate reference and file all revisions and additions, if any, that have been made to the contract or franchise.

(f) The applicant for a license as a new recreational vehicle dealer shall furnish satisfactory evidence that the applicant:

(1) Maintains adequate space in the building or structure wherein the applicant conducts the business of selling recreational vehicles;

(2) Has or will have adequate facilities in the building or structure to perform repair and service work on recreational vehicles and adequate space for storage of new parts and accessories for recreational vehicles; and

(3) Will perform repair and warranty services on recreational vehicles at the licensed location, if the dealer provides such services.

(g)(1) A dealer shall maintain for three (3) years after the date of purchase records of each vehicle transaction to which the dealer was a party.

(2) A dealer shall:

(A) Maintain copies of all documents executed in connection with a transaction, including without limitation bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments; and

(B) Be open to inspection by the Executive Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

History. Acts 2013, No. 1043, § 10.

23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, and distributors.

(a) The license issued to each recreational vehicle dealer, manufacturer, or distributor shall specify the location of the factory, office, branch, or division of the recreational vehicle dealer, manufacturer, or distributor.

(b) In case the location is changed, the Arkansas Motor Vehicle Commission shall endorse the change of location on the license without charge if it is within the same county in this state for a dealership or if it is within this state for a manufacturer or distributor.

(c) The change of a dealership location to another county in this state or of a manufacturer or distributor to another state requires a new license.

(d)(1) A licensee shall notify the commission in writing of any change in the business or corporate name or structure and of any alternate name or names in which the company will do business, otherwise known as "DBA names", and shall provide the original issue license with the notification of name change or addition of a DBA name or names.

(2) The commission shall endorse the change on the license without charge.

History. Acts 2013, No. 1043, § 10.

23-112-1007. Display of license — Change of employer — Factory representative and distributor representative.

(a) A recreational vehicle factory representative shall have his or her license upon his or her person when engaged in his or her business and shall display the license upon request.

(b)(1) The name of the employer of the factory representative shall be stated on the license.

(2) In case of a change of employer, the holder of the license shall immediately mail the license to the Arkansas Motor Vehicle Commission for its endorsement on the license of the change of employer.

History. Acts 2013, No. 1043, § 10.

23-112-1008. Display of license — Change of employer — Salesperson.

(a)(1) Except as provided in this section, a recreational vehicle salesperson shall have his or her license upon his or her person or displayed at his or her place of employment when engaged in his or her business and shall display the license upon request.

(2) The name and address of the applicant shall be stated on the license.

(b) In case of a change of employer, the following procedure shall be followed:

(1) Within three (3) days following the change of employer, the licensee shall notify in writing the Arkansas Motor Vehicle Commission for its endorsement;

(2) Within three (3) days following the termination of employment of the licensee, the last employer of the licensee shall make a report to the commission setting forth the reasons that the services of the licensee were terminated and such other information as may be required by the commission;

(3)(A) Upon receipt by the commission of the licensee's written notification and the last employer's report, the commission shall determine if it has grounds to believe, and does believe, that the licensee is no longer qualified under this subchapter as a recreational vehicle salesperson.

(B) Under such circumstances, the commission shall immediately notify the licensee and the licensee's new employer in writing that a hearing will be held for the purpose of determining whether his or her license should be revoked or suspended, specifying the grounds for revocation or suspension, as the case may be, and the time and place for the hearing.

(C) The hearing and any appeal by the licensee with respect to the hearing shall comply with § 23-112-501 et seq.; and

(4)(A) If after the commission receives the licensee's license and fee and his or her last employer's report the Executive Director of the Arkansas Motor Vehicle Commission cannot for any reason endorse and mail to the licensee his or her license within a period of three (3) days following the receipt by the commission of the licensee's license and fee and his or her last employer's report, then the executive director shall mail to the licensee a permit in such form as the commission shall prescribe.

(B) The permit shall serve in lieu of a license until such time as the:

(i) Commission endorses and mails the license to the licensee; or

(ii) Licensee's license is revoked or suspended in accordance with this subchapter.

(C) If the license is ultimately revoked or suspended, then immediately upon the revocation or suspension the licensee shall return the permit to the commission for cancellation.

(c)(1) The commission shall maintain a permanent file with respect to each licensed recreational vehicle salesperson.

(2) Each file shall contain all pertinent information with respect to the fitness and qualifications of each licensee for use by the commission in determining whether his or her license should be revoked or suspended.

(d)(1) There is no intent under this subchapter to prevent a salesperson who has not previously been licensed as a salesperson from selling during the time required to process his or her application.

(2) The applicant shall be allowed to sell from the date of employment as long as the applicant and his or her dealer follow the procedure for license application.

History. Acts 2013, No. 1043, § 10.

23-112-1009. Expiration of license.

Unless the Arkansas Motor Vehicle Commission by rule provides to the contrary, all licenses issued to:

(1) Recreational vehicle manufacturers, distributors, and their representatives expire June 30 following the date of issue; and

(2) Recreational vehicle dealers and salespersons expire December 31 following the date of issue.

History. Acts 2013, No. 1043, § 10.

23-112-1010. Area of sales responsibility.

(a) The following conditions shall apply to the area of sales responsibility of a dealer included in a dealer agreement:

(1) The manufacturer shall designate in the dealer agreement the area of sales responsibility exclusively assigned to the dealer;

(2) The manufacturer shall not change the area of sales responsibility of a dealer or establish another dealer for the same line-make in that area during the term of the dealer agreement; and

(3) The area of sales responsibility shall not be reviewed or changed without the consent of both parties until one (1) year after the execution of the dealer agreement.

(b) A dealer shall not conduct sales activity or display for sale recreational vehicles outside of its designated area of sales responsibility except as provided under § 23-112-901 et seq. and the Rules of the Arkansas Motor Vehicle Commission.

(c) A dealer may sell off-premise or display recreational vehicles within the area of sales responsibility as provided by commission rule.

(d) The dealer shall notify the commission of any change in ownership in accordance with § 23-112-1019.

History. Acts 2013, No. 1043, § 10.

23-112-1011. Renewal of dealer agreement.

In a renewal of a dealer agreement, the manufacturer shall not impose on the dealer stocking requirements or retail sales targets that are inconsistent with market growth or contraction in the area of sales responsibility of the dealer.

History. Acts 2013, No. 1043, § 10.

23-112-1012. Termination, cancellation, or nonrenewal of dealer agreement.

(a)(1) A manufacturer or distributor, directly or through any authorized officer, agent, or employee, may terminate, cancel, or fail to renew a dealer agreement with or without good cause.

(2) If the manufacturer or distributor terminates, cancels, or fails to renew the dealer agreement without good cause, the manufacturer or distributor shall comply with § 23-112-1013.

(3) If the manufacturer or distributor terminates, cancels, or fails to renew the dealer agreement with good cause, the terms of § 23-112-1013 do not apply.

(b)(1) When terminating or cancelling for good cause, the manufacturer or distributor has the burden of showing good cause for terminating or cancelling a dealer agreement with a dealer.

(2) For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(A) The extent of the affected dealer's penetration in the area of sales responsibility;

(B) The nature and extent of the dealer's investment in its business;

(C) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

(D) The effect of the proposed action on the community;

(E) The extent and quality of the dealer's service under warranties associated with recreational vehicles;

(F) The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership; and

(G) The performance of the dealer under the terms of its dealer agreement.

(c)(1) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least ninety (90) days' prior written notice of termination, cancellation, or nonrenewal of the dealer agreement if the dealer is being terminated for good cause.

(2) The notice shall state:

(A) All reasons for the proposed termination, cancellation, or nonrenewal of the dealer agreement; and

(B)(i) That if within thirty (30) days following receipt of the notice the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then

have ninety (90) days following receipt of the original notice to rectify the deficiencies.

(ii) If the deficiencies are rectified within ninety (90) days following receipt of the original notice, the manufacturer's or distributor's notice is voided.

(iii) If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal takes effect thirty (30) days after the dealer's receipt of the original notice from the manufacturer. If the dealer has new and untitled recreational vehicle inventory, the inventory may be sold under § 23-112-1014.

(3) The notice period may be reduced to thirty (30) days if the manufacturer's or distributor's grounds for termination, cancellation, or nonrenewal are due to any of the following good-cause factors:

(A) A dealer's or one (1) of its owners' being convicted of, or entering a plea of nolo contendere to, a felony;

(B) The abandonment or closing of the business operations of the dealer for ten (10) consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;

(C) A misrepresentation by the dealer materially affecting the business relationship;

(D) A suspension or revocation of the dealer's license or refusal to renew the dealer's license by the Arkansas Motor Vehicle Commission; or

(E) A material violation of this subchapter that is not cured within thirty (30) days after the written notice by the manufacturer.

(4) The notice provisions of this subsection do not apply if the reason for termination, cancellation, or nonrenewal is:

(A) The dealer's insolvency;

(B) The occurrence of an assignment for the benefit of creditors; or

(C) Bankruptcy.

(d)(1) A dealer may terminate or cancel its dealer agreement with a manufacturer or distributor with or without good cause by giving ninety (90) days' written notice.

(2) If the termination or cancellation is for good cause, the notice shall state:

(A) All reasons for the proposed termination or cancellation; and

(B) That if within thirty (30) days following receipt of the notice the manufacturer or distributor provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then have ninety (90) days following receipt of the original notice to rectify the deficiencies.

(3)(A) If the deficiencies are rectified within ninety (90) days from receipt of the original notice, the dealer's notice is voided.

(B) If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the time period prescribed in the original notice of termination or cancellation, the pending termina-

tion or cancellation shall take effect thirty (30) days after the manufacturer's or distributor's receipt of the original notice.

(4)(A) If the dealer terminates, cancels, or fails to renew the dealer agreement without good cause, the terms of § 23-112-1013 do not apply.

(B) If the dealer terminates, cancels, or fails to renew the dealer agreement with good cause, the terms of § 23-112-1013 do apply.

(C) The dealer has the burden of showing good cause.

(D) Any of the following items shall be deemed good cause for the proposed termination, cancellation, or nonrenewal action by a dealer:

(i) A manufacturer's being convicted of, or entering a plea of nolo contendere to, a felony;

(ii) The business operations of the manufacturer having been abandoned or closed for ten (10) consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control;

(iii) A significant misrepresentation by the manufacturer materially affecting the business relationship;

(iv) A material violation of this subchapter which is not cured by the manufacturer within thirty (30) days after written notice; or

(v) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(e) If the dealer agreement is terminated or cancelled with or without cause, the terminating or cancelling party shall notify the commission of the termination or cancellation within ten (10) days of sending the termination or cancellation notice and include a copy of the notice.

History. Acts 2013, No. 1043, § 10.

23-112-1013. Repurchase of inventory.

If the dealer agreement is terminated, canceled, or not renewed by the manufacturer or distributor without good cause under § 23-112-1011 or by the dealer for good cause as defined in § 23-112-1011 and the manufacturer fails to cure the claimed deficiencies under § 23-112-1011, the manufacturer, at the election of the dealer and within forty-five (45) days after termination, cancellation, or nonrenewal, shall repurchase:

(1)(A) All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within twelve (12) months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at one hundred percent (100%) of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer.

(B) If any of the vehicles repurchased under this subchapter are damaged but do not trigger a consumer disclosure requirement, the

amount due the dealer shall be reduced by the cost to repair the vehicle.

(C) Damage to a recreational vehicle before delivery to a dealer that is disclosed at the time of delivery shall not disqualify its repurchase under this subdivision (1);

(2) All undamaged accessories and proprietary parts sold to the dealer for resale within the twelve (12) months before termination, cancellation, or nonrenewal, if accompanied by the original invoice, at one hundred five percent (105%) of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(3) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at one hundred percent (100%) of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if:

(A) The diagnostic equipment, special tools, current signage, and other equipment and machinery were purchased by the dealer within five (5) years before termination, cancellation, or nonrenewal upon the manufacturer's or distributor's request; and

(B) The dealer meets the burden of establishing that the diagnostic equipment, special tools, current signage, and other equipment and machinery can no longer be used in the normal course of the dealer's ongoing business.

History. Acts 2013, No. 1043, § 10.

23-112-1014. Sale of remaining inventory after termination.

(a) A dealer is not prohibited from selling the remaining in-stock inventory of a particular line-make after a dealer agreement has been terminated or not renewed under § 23-112-1012.

(b) If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer or distributor, the dealer may continue to sell all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer's inventory.

History. Acts 2013, No. 1043, § 10.

23-112-1015. Change of ownership of dealer — Family succession.

(a) The following conditions apply to a proposed sale of the business assets, transfer of the stock, or other transaction that will result in a change of ownership of a dealer, except a transaction described in subsection (b) of this section:

(1) The dealer shall:

(A) Provide written notice to the manufacturer within sixty (60) days before the proposed closing of the transaction; and

(B) Include all supporting documentation as may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made;

(2) In the absence of a breach by the selling dealer of its dealer agreement or a failure to comply with subdivision (a)(1) of this section, the manufacturer or distributor shall not object to the proposed change in ownership unless the prospective transferee meets one (1) or more of the following:

(A) The prospective transferee has previously been terminated by the manufacturer for breach of its dealer agreement;

(B) The prospective transferee has been convicted of a felony or any crime of fraud, deceit, or moral turpitude in the preceding ten (10) years;

(C) The prospective transferee does not have:

(i) An application for a recreational vehicle dealer's license pending; or

(ii) A tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;

(D) The prospective transferee does not have an active line of credit sufficient to purchase a manufacturer's product; or

(E) In the preceding ten (10) years the prospective transferee has undergone:

(i) Bankruptcy;

(ii) Insolvency;

(iii) A general assignment for the benefit of creditors; or

(iv) The appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property; and

(3)(A) If the manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor shall give written notice of its reasons to the dealer within fifteen (15) business days after receipt of the dealer's notification and complete documentation.

(B) If the manufacturer or distributor does not give timely notice of its objection, the change or sale shall be deemed approved.

(C) The manufacturer or distributor has the burden of proof when objecting to the proposed change of ownership.

(b) The following conditions apply concerning the death, incapacity, or retirement of the designated dealer principal:

(1) It is unlawful for a manufacturer or distributor:

(A) To fail to provide a dealer an opportunity to designate in writing a family member as a successor to the dealership; and

(B) To prevent or refuse to honor the succession to a dealership by a family member unless the manufacturer or distributor has provided to the dealer written notice of its objections within thirty (30) days after receipt of the dealer's modification of the dealer's succession plan;

(2) In the absence of a breach of the dealer agreement, the manufacturer or distributor may object to the succession for the following reasons:

(A) Conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude in the preceding ten (10) years;

(B) Bankruptcy or insolvency of the successor in the preceding ten (10) years;

(C) Prior termination by the manufacturer or distributor of the successor for breach of a dealer agreement;

(D) The lack of an active line of credit for the successor sufficient to purchase the manufacturer's product; or

(E) The lack of:

(i) A pending application for a recreational vehicle dealer's license; or

(ii) A tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;

(3) The manufacturer or distributor has the burden of proof regarding its objection to the succession to a dealership by a family member; and

(4) The consent of the manufacturer or distributor is required for the succession to a dealership by a family member if the succession involves a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

(c) The dealer shall notify the Arkansas Motor Vehicle Commission of any change in ownership in accordance with § 23-112-1019.

History. Acts 2013, No. 1043, § 10.

23-112-1016. Warranty obligation.

(a) Each warrantor shall:

(1) Specify in writing to each of its dealers the obligations for preparation, delivery, and warranty service on its products;

(2) Compensate the dealer for warranty service required of the dealer by the warrantor;

(3)(A) Provide the dealer:

(i) The schedule of compensation to be paid; and

(ii) The time allowances for the performance of any work or service.

(B) The schedule of compensation shall include:

(i) Reasonable compensation for diagnostic work as well as warranty labor; and

(ii) Reasonable time allowances in the schedule for the diagnosis and performance of warranty labor.

(C) In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration are:

(i) The actual wage rates being paid by the dealer; and

(ii) The actual retail labor rate being charged by the recreational vehicle dealers in the community in which the dealer is doing business;

(4) Compensate a dealer for warranty labor not less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable;

(5) For individual warranty parts, reimburse the dealer at actual wholesale cost plus a minimum handling charge of thirty percent (30%) and the cost, if any, of freight to return warranty parts to the warrantor;

(6) For complete components or accessories, provide the dealer with the new complete component or accessory plus the cost, if any, of freight to return the defective complete component or accessory to the warrantor; and

(7)(A) Approve or disapprove warranty claims in writing within thirty (30) days after the date of submission by the dealer in the manner and form prescribed by the warrantor.

(B) Claims not specifically disapproved in writing within thirty (30) days shall be considered to be approved.

(C) A claim that is approved or considered to be approved under this section shall be paid within sixty (60) days of submission.

(b)(1) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis.

(2) Dealer claims for warranty compensation shall not be denied except for cause, including without limitation:

(A) Performance of nonwarranty repairs;

(B) Material noncompliance with the warrantor's published policies and procedures;

(C) Lack of material documentation;

(D) Fraud; or

(E) Misrepresentation.

(c) A dealer shall:

(1) Submit warranty claims within thirty (30) days after completing work; and

(2) Notify the warrantor in writing if the dealer is unable to perform any warranty repairs within ten (10) days of receipt of a written complaint from a consumer.

(d)(1) A warrantor shall not:

(A) Fail to perform any of its warranty obligations with respect to its warranted products;

(B)(i) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the factory campaign work.

(ii) The warrantor may ship parts to the dealer to effect the factory campaign work, and if the parts are in excess of the dealer's requirements, the dealer may return unused undamaged parts to the warrantor for credit after completion of the factory campaign;

(C) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, or distributor;

(D) Fail to compensate any of its dealers in accordance with the schedule of compensation provided to the dealer under this section if performed in a timely and competent manner;

(E) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer as warrantor or co-warrantor; or

(F) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(2)(A) Notwithstanding the terms of any dealer agreement, it is a violation of this subchapter for a warrantor to fail to indemnify and hold harmless its new recreational vehicle dealer against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the warrantor.

(B) A new recreational vehicle dealer shall not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a new recreational vehicle.

(C) A new recreational vehicle dealer may be denied indemnification if the new recreational vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreational vehicle dealer is obligated to perform warranty service.

(D)(i) A new recreational vehicle dealer shall provide to a warrantor written notice of a pending lawsuit in which allegations are made that are covered by this subchapter within ten (10) business days after the dealer receives written notice of the lawsuit.

(ii) Written notice to the warrantor shall be by any method that provides a receipt for delivery.

(E) Subdivision (d)(2) of this section applies even after the new recreational vehicle is titled.

(e)(1) It is a violation of this subchapter for any dealer to:

(A) Fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(B) Fail to perform warranty service work authorized by the warrantor in a competent and reasonably timely manner on a transient customer's vehicle of a line-make sold and serviced or serviced by that dealer;

(C) Fail to accurately document the:

(i) Time spent completing each repair;

(ii) Total number of repair attempts conducted on a single unit; and

(iii) Total number of repair attempts for the same repair conducted on a single vehicle;

(D) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair;

(E) Make fraudulent warranty claims; or

(F) Misrepresent the terms of a warranty.

(2)(A) Notwithstanding the terms of any dealer agreement, it is a violation of this subchapter for a new recreational vehicle dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the new recreational vehicle dealer.

(B) A warrantor shall provide to a new recreational vehicle dealer a copy of any pending lawsuit or similar proceeding in which allegations are made that come within the provisions of this subsection within ten (10) days after receiving such suit.

(C) This subdivision (e)(2) applies even after the new recreational vehicle is titled.

History. Acts 2013, No. 1043, § 10.

23-112-1017. Damage to recreational vehicles before arrival at dealership.

(a) All the following apply if a new recreational vehicle is damaged before transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor:

(1) The dealer shall notify the manufacturer or distributor of the damage within the time frame specified in the dealer agreement and:

(A) Request authorization from the manufacturer or distributor to replace the components, parts, and accessories damaged or otherwise correct the damage; or

(B) Reject the vehicle within the time frame specified in the dealer agreement;

(2) If the manufacturer or distributor refuses or fails to authorize repair of the damage within ten (10) days after receipt of notification or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle reverts to the manufacturer or distributor; and

(3) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer has no other obligations, financial or otherwise, with respect to that recreational vehicle.

(b)(1) A dealer agreement shall include a time frame for inspection and rejection by the dealer.

(2) The time frame shall not be less than three (3) business days after the physical delivery of the recreational vehicle.

(c) As used in this section, "damaged before transit" and "damaged in transit" do not include inspection or warranty repairs or service.

(d)(1) A recreational vehicle that has at the time of delivery to the dealer an unreasonable number of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor.

(2) However, if the number of miles on the odometer of the recreational vehicle is less than the sum of the distance in miles between the

dealer and the factory of the manufacturer or point of distribution plus one hundred (100) miles, the dealer shall not consider the number of miles on the odometer unreasonable.

History. Acts 2013, No. 1043, § 10.

23-112-1018. Prohibited activity of manufacturer or distributor — Coercion.

(a) A manufacturer or distributor shall not coerce or attempt to coerce a dealer to:

(1) Purchase a product that the dealer did not order;

(2) Enter into an agreement with the manufacturer or distributor; or

(3) Enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this subchapter.

(b) As used in this subchapter, "coerce" includes without limitation:

(1) Threatening to terminate, cancel, or not renew a dealer agreement without good cause;

(2) Threatening to withhold product lines the dealer is entitled to purchase under the dealer agreement; or

(3) Delaying delivery of recreational vehicles as an inducement to amend the dealer agreement.

History. Acts 2013, No. 1043, § 10.

23-112-1019. License — Denial, revocation, and suspension.

(a) For any of the following reasons, the Arkansas Motor Vehicle Commission may deny an application for a license required by this subchapter or revoke or suspend a license after it has been granted:

(1)(A) Selling or soliciting sales of a recreational vehicle without a license issued by the commission.

(B) The unlawful sale or solicitation of each recreational vehicle constitutes a separate offense;

(2) On satisfactory proof of the unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this subchapter;

(3) Fraud practiced or any material misstatement made by an applicant in an application for license under this subchapter;

(4) Failure to comply with any provision of this subchapter or with any rule promulgated by the commission under authority vested in it by this subchapter;

(5) Change of condition after a license is granted or failure to maintain the qualifications for license;

(6) Continued violation of any of the provisions of this subchapter or of any of the rules of the commission;

(7) Violation of any law relating to the sale, distribution, or financing of recreational vehicles;

(8) Defrauding a retail buyer to the buyer's damage;

(9) Failure to perform a written agreement with a retail buyer;

(10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license except as provided under § 23-112-301;

(11) Falsifying, altering, or neglecting to endorse or deliver a certificate of title to a transferee or lawful owner or failing to properly designate a transferee on a document of assignment or certificate of title;

(12) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen recreational vehicle;

(13) Submitting a false affidavit setting forth that a title has been lost or destroyed;

(14) Passing title or reassigning title as a dealer without a dealer's license or when the dealer's license has been suspended or revoked;

(15) For a person representing that he or she is a dealer or salesperson, either verbally or in an advertisement, when the person is not licensed as a dealer or salesperson;

(16) Assisting a person in the sale of a recreational vehicle who is not licensed as a dealer by the commission;

(17) Being a manufacturer who fails to specify the delivery and preparation obligations of its recreational vehicle dealers, as is required for the protection of the buying public, before delivery of new recreational vehicles to retail buyers;

(18) On satisfactory proof that a manufacturer, distributor, distributor branch or division, or factory branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill a warranty agreement or to adequately and fairly compensate any of its recreational vehicle dealers for labor or parts expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer;

(19) For the commission of any act prohibited by this subchapter or the failure to perform any of the requirements of this subchapter;

(20) Using or permitting the use of special license plates assigned to a licensee for any other purpose than those permitted by law;

(21) Disconnecting, turning back, or resetting the odometer of a motor home in violation of state or federal law;

(22) Accepting an open assignment of title or bill of sale for a recreational vehicle that does not identify the licensee as the purchaser or assignee of the recreational vehicle;

(23)(A) Failing to notify the commission of a change in ownership, location, or dealer agreement or any other matters the commission may require by rule.

(B) The notification shall be in writing and submitted to the commission at least fifteen (15) days before the effective date of the change;

(24) Failing to endorse and deliver an assignment and warranty of title to the buyer under § 27-14-902;

(25) Using or permitting the use of a temporary cardboard buyer's tag assigned to the dealer for any purpose other than what is permitted under § 27-14-1705; and

(26) Failure of a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin to a buyer within a reasonable period of time.

(b) The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, or distributor branch or division may be limited to:

(1) One (1) or more municipalities or counties; or

(2)(A) The sales area of a dealer whose franchise is unfairly cancelled or terminated under this subchapter or whose franchise is not renewed in violation of this subchapter.

(B) However, when a franchise is unfairly cancelled or terminated under this subchapter or is not renewed in violation of this subchapter in a metropolitan area serviced by several recreational vehicle dealers handling the same recreational vehicles, the revocation or suspension does not apply to the remaining recreational vehicle dealers in the metropolitan area.

History. Acts 2013, No. 1043, § 10.

23-112-1020. Monetary penalty in lieu of suspension or revocation of license — Civil penalty.

(a) For a monetary penalty in lieu of suspension or revocation of a license, the following apply:

(1)(A) If after alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that a person holding a license under this subchapter is guilty of a violation of this subchapter or rules promulgated under this subchapter, the commission may impose a monetary penalty upon the licensee in lieu of suspension or revocation of a license.

(B)(i) The commission may require the licensee to pay the monetary penalty with the sanction that the license shall be suspended until the penalty is paid.

(ii) The period of suspension shall not exceed ninety (90) days from entry of the commission's order or final order on appeal.

(C) The penalty in lieu of suspension or revocation of a license may be imposed only if the commission formally finds that the public interest would not be impaired by the imposition of the penalty and the payment of the penalty will achieve the desired disciplinary results;

(2)(A) If the commission finds that there is sufficient cause upon which to base the revocation of a license, the amount of the monetary penalty in lieu of revocation shall not exceed ten thousand dollars ($10,000).

(B)(i) If the commission finds that there is sufficient cause upon which to base the suspension of a license, the amount of the monetary

penalty in lieu of suspension shall not be less than fifty dollars ($50.00) nor more than five hundred dollars ($500) per day for each day the license would otherwise be suspended.

(ii) However, the amount of the penalty shall not exceed the aggregate of five thousand dollars ($5,000);

(3) If the commission has revoked the license because of the violation, the commission shall not impose a penalty;

(4) Each instance when this subchapter or a rule is violated constitutes a separate violation; and

(5) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission shall have the power to file suit in Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

(b) The following apply to a civil penalty:

(1) If after request for alternative proceedings or notice and hearing the commission finds that a person not holding a license under this subchapter is guilty of a violation of this subchapter or rules promulgated under this subchapter, the commission may impose a monetary penalty upon the person not to exceed one thousand dollars ($1,000) per violation;

(2) Each day of violation of this subchapter or of a rule constitutes a separate violation subjecting the person to a separate civil penalty;

(3) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission may file suit in Pulaski County Circuit Court to obtain a judgment for the amount of the penalty not paid; and

(4)(A) Repeated violations by a person not holding a license under this subchapter shall result in an increase in the penalty assessed by the commission.

(B) As used in this subdivision (b)(4), "second violation" and "subsequent violation" mean a violation of the same nature as a previously remedied violation that occurs within five (5) years of the remedied violation by a person not holding a license under this subchapter.

(C) The commission may impose a penalty not to exceed two thousand five hundred dollars ($2,500) for a second violation, with the penalty increasing in increments of two thousand five hundred dollars ($2,500) for each subsequent violation.

History. Acts 2013, No. 1043, § 10.

23-112-1021. Enforcement.

(a) The Arkansas Motor Vehicle Commission may enter orders that direct compliance with this subchapter and rules under this subchapter if any of the following conditions have been met:

(1) The commission has conducted a hearing within sixty (60) days on the matter;

(2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or

(3) The commission finds that the current civil or administrative penalties are insufficient.

(b) The commission may enforce its findings and conclusions upon entry of an order under subsection (a) of this section.

History. Acts 2013, No. 1043, § 10.

23-112-1022. Civil action and mediation.

(a)(1) A dealer, manufacturer, distributor, or warrantor injured by another party's violation of this subchapter may bring a civil action in circuit court to recover actual damages.

(2) The court shall award attorney's fees and costs to the prevailing party in such an action.

(b)(1) Venue for a civil action under this section is in the county in which the dealer's business is located.

(2) In an action involving more than one (1) dealer, venue may be in any county in which any dealer that is party to the action is located.

(c)(1) Before bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(2) The demand for mediation shall:

(A) Be served upon the other party via certified mail at the address stated within the dealer agreement between the parties; and

(B) Contain a brief statement of the dispute and the relief sought by the party filing the demand.

(3)(A) Within twenty (20) days after the date on which a demand for mediation is served, the parties shall:

(i) Mutually select an independent certified mediator; and

(ii) Meet with the mediator to attempt to resolve the dispute.

(B) The meeting place shall be in this state in a location selected by the mediator.

(C) The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(4)(A) The service of a demand for mediation under this section tolls the time for the filing of a complaint, petition, protest, or other action under this subchapter until representatives of both parties have met with a mutually selected mediator to attempt to resolve the dispute.

(B) If a complaint, petition, protest, or other action is filed before that meeting, the court:

(i) Shall enter an order suspending the proceeding or action until the mediation meeting has occurred; and

(ii) Upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, may enter an order suspending the proceeding or action for as long as the court considers appropriate.

(5) The parties to the mediation shall:
(A) Bear their own costs for attorney's fees; and
(B) Divide equally the cost of the mediator.

History. Acts 2013, No. 1043, § 10.

23-112-1023. Injunction.

(a) In addition to any remedy provided in this subchapter or otherwise available by law, a manufacturer, distributor, warrantor, or a dealer may apply to a court of competent jurisdiction for the issuance, upon a hearing and for cause shown, of a temporary or permanent injunction or other equitable relief restraining a person from doing any of the following:
(1) Acting as a dealer without being properly licensed;
(2) Committing a single act or multiple acts in violation of this subchapter; or
(3) Failing or refusing to comply with any requirement of this subchapter.
(b) The Arkansas Motor Vehicle Commission may seek an injunction upon affidavit in the circuit court for the county in which the commission's office is located to prevent a person, firm, partnership, association, corporation, or legal entity from violating a provision of this subchapter or a rule promulgated by the commission.
(c) The commission shall not be required to:
(1) Execute or give bond for costs, indemnity, or stay; or
(2) Give security as a condition to the issuance of a restraining order or injunction, either temporary or permanent.

History. Acts 2013, No. 1043, § 10.

CHAPTER 113

LOCAL OPTION HORSE RACING AND GREYHOUND RACING ELECTRONIC GAMES OF SKILL ACT

SUBCHAPTER.
1. General Provisions.
2. Authorization of Wagering on Electronic Games of Skill Subject to Approval at Local Option Election.
3. Arkansas Racing Commission.
4. Contribution to Purses and Promotion of Arkansas Thoroughbred and Greyhound Breeding Activities.
5. Privilege Fees.
6. Miscellaneous.

Subchapter 1 — General Provisions

SECTION.
23-113-101. Legislative findings.
23-113-102. Title.
23-113-103. Definitions.

Effective Dates. Acts 2005, No. 1151, § 2: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the Eighty-Fifth General Assembly of the State of Arkansas that competition from outside the State of Arkansas is having an adverse impact on the horse racing and greyhound racing industries in this state and related agribusinesses; that Louisiana racetracks are now offering to their patrons wagering on various types of electronic wagering games; that racetracks in the State of Oklahoma will soon be offering to their patrons wagering on electronic games, and the State of Texas is considering doing the same; that these economic conditions are adversely affecting, and these impending and potential developments will in the very near future more substantially adversely affect, the economic benefits to the State of Arkansas directly and indirectly accruing from the horse racing and greyhound racing industries and related agribusinesses; that these conditions are adversely affecting, and these impending and potential developments will in the very near future more substantially adversely affect, jobs, economic development, and tourism in Arkansas, and it is imperative to address immediately these conditions, developments and competitive burdens, and in order to accomplish these objectives, essential to the welfare of the State of Arkansas and its citizens and residents, the provisions set forth in this act must be effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the governor and the veto is overridden, the date the last house overrides the veto."

23-113-101. Legislative findings.

(a) It is found and determined by the General Assembly that:

(1) Horse racing and greyhound racing parks in the State of Arkansas promote economic and agribusiness activity in the state and especially in the local communities where the horse racing and greyhound racing parks are located;

(2) Arkansas horse racing and greyhound racing parks also often promote tourism and positive publicity for the state, including recent national publicity surrounding the racehorse Smarty Jones, the winner of the 2004 Arkansas Derby and the 2004 Kentucky Derby, that went on to be honored as the 2004 best three-year-old thoroughbred horse in the country;

(3) Many states, including Louisiana and Oklahoma, have authorized racetracks to offer wagering on additional forms of electronic games. The State of Texas is considering doing the same;

(4) Many Arkansans travel to adjoining states in order to wager at legal gambling establishments in those states. This adversely impacts Arkansas tourism and results in certain economic activity leaving Arkansas for the benefit of adjoining states;

(5) Economic and agribusiness benefits derived by the State of Arkansas from horse racing and greyhound racing parks in Arkansas, including Arkansas farms and breeding operations, are and will continue to be adversely impacted by these developments in adjoining and other states;

(6) Although Arkansas horse racing and greyhound racing parks presently are allowed to offer wagering on electronic games based on previously run horse and greyhound races, racetracks in adjoining and other states are allowed to offer more types of electronic wagering games; and

(7) These developments place Arkansas horse racing and greyhound racing parks at a competitive disadvantage to their counterparts in other states and especially affect the economies of the local Arkansas communities and related agribusinesses where the horse racing and greyhound racing parks are located in Arkansas.

(b) It is further found and determined by the General Assembly that:

(1) If no effort is made to address these issues:

(A) Arkansans will continue to spend money out of state which might otherwise be spent in Arkansas;

(B) Arkansas horse racing and greyhound racing parks will remain at a competitive disadvantage to their out-of-state counterparts, and this will not only adversely impact horse racing and greyhound racing parks in Arkansas, but also related Arkansas agribusinesses, including farms and breeding operations, and other Arkansas businesses that realize economic benefits from horse racing and greyhound racing activities in Arkansas; and

(C) Jobs at Arkansas horse racing and greyhound racing parks and at related Arkansas agribusinesses, including farms and breeding operations, along with jobs at other Arkansas businesses that realize economic benefits from horse racing and greyhound racing activities in Arkansas, may become in jeopardy; and

(2) If this chapter is enacted and becomes law and local voters in the communities where the horse racing and greyhound racing parks are located approve the wagering on additional games of skill at Arkansas horse racing and greyhound racing parks as provided in this chapter:

(A) Arkansans will spend money in Arkansas which might otherwise have been spent out of state;

(B) Arkansas horse racing and greyhound racing parks will become more competitive, and this will provide economic benefits to related Arkansas agribusinesses, including farms and breeding operations, as well as other related Arkansas businesses; and

(C) Jobs at Arkansas horse racing and greyhound racing parks and at related agribusinesses, along with jobs at other businesses that realize economic benefits from horse racing and greyhound racing activities in Arkansas, will be better protected and more secure, and additional job opportunities may be created.

(c) For the reasons stated in subsections (a) and (b) of this section and other reasons, the General Assembly finds that cities or counties where horse racing or greyhound racing parks are located in Arkansas should have the opportunity to address these issues and promote economic development, tourism, and agribusiness by allowing the voters in those cities or counties to have the opportunity by local election to authorize horse racing or greyhound racing parks in their

communities to offer wagering on additional forms of electronic games of skill.

History. Acts 2005, No. 1151, § 1.

CASE NOTES

Constitutionality.

Citizens failed to meet burden to show unconstitutionality of legislation, Acts 2005, No. 1151, that granted franchise holders permission to allow wagering on electronic games because the Act was not an impermissible delegation of authority to the Arkansas Racing Commission, and there was nothing irrational or arbitrary about the legislature's decision. Gallas v. Alexander, 371 Ark. 106, 263 S.W.3d 494 (2007).

23-113-102. Title.

This chapter shall be known and may be cited as the "Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act".

History. Acts 2005, No. 1151, § 1.

23-113-103. Definitions.

As used in this chapter:

(1) "Arkansas Greyhound Racing Law" means the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;

(2) "Arkansas Horse Racing Law" means the Arkansas Horse Racing Law, § 23-110-101 et seq.;

(3) "Commission" means the Arkansas Racing Commission or its successor having jurisdiction over horse racing and greyhound racing in this state;

(4) "Director" means the Director of the Department of Finance and Administration;

(5)(A) "Electronic games of skill" means games played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment when the outcome is not completely controlled by chance alone.

(B) "Electronic games of skill" does not include pari-mutuel wagering on horse racing and greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether pari-mutuel wagering on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(6) "Franchise holder" means any person holding a franchise to conduct horse racing under the Arkansas Horse Racing Law, § 23-110-101 et seq., or greyhound racing under the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;

(7) "Net wagering revenues from electronic games of skill" means the gross wagering revenues received by a franchise holder from wagers placed by patrons on electronic games of skill, less amounts paid out or

separately reserved under rules of the commission for future pay out to patrons on the wagers; and

(8) "Person" means any individual, corporation, partnership, association, trust, or other entity.

History. Acts 2005, No. 1151, § 1.

CASE NOTES

Electronic Game of Skill.

In subdivision (5) of this section, the legislature provided very clear guidelines for determining whether a game or device constituted an electronic game of skill. First and foremost, the Arkansas General Assembly defined the term "electronic game of skill." In addition, it specifically set forth what it considered to be a guideline in determining whether a game is not completely controlled by chance alone. Gallas v. Alexander, 371 Ark. 106, 263 S.W.3d 494 (2007).

Subchapter 2 — Authorization of Wagering on Electronic Games of Skill Subject to Approval at Local Option Election

SECTION.

23-113-201. Wagering on electronic games of skill conducted by franchise holders — Limitations.

23-113-201. Wagering on electronic games of skill conducted by franchise holders — Limitations.

(a)(1) In addition to pari-mutuel wagering on horse racing and greyhound racing authorized by the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., respectively, any franchise holder may conduct wagering on electronic games of skill in accordance with this chapter at any time or times during the calendar year at locations on the grounds of the franchise holder's racetrack park site where the franchise holder is authorized by the Arkansas Racing Commission to conduct pari-mutuel wagering on horse racing or greyhound racing pursuant to the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., as the case may be.

(2)(A)(i) The franchise holder may not conduct wagering on electronic games of skill under this chapter unless the question of the wagering on electronic games of skill under this chapter has been submitted to the electors of the city, town, or county in which the franchise holder's racetrack park site is located and where the wagering on electronic games of skill is to be conducted, at any special or general election, and a majority of the electors voting on the question have approved at the election wagering on electronic games of skill under this chapter.

(ii) If the racetrack park is located within the corporate limits of a city or town, the question shall be submitted to the electors of either the city, town, or county in which the racetrack park is located, as requested by the franchise holder, and if the racetrack park is not

located within the corporate limits of a city or town, then the question shall be submitted to the electors of the county in which the racetrack park is located.

(B)(i) The governing body of the city, town, or county, as the case may be, shall by ordinance submit the question to the electors if requested by the franchise holder.

(ii) If the franchise holder makes a request for an election, the franchise holder shall present to the governing body evidence of anticipated benefits to economic development, job creation, tourism, and agribusiness which may result, directly or indirectly, from the authorization of wagering on electronic games of skill at the franchise holder's racetrack park site under this chapter, if approved by the local voters at the election.

(iii) The franchise holder may make requests on one (1) or more occasions, and elections so requested from time to time by the franchise holder may be held during any one (1) or more calendar years as requested from time to time by the franchise holder, but not more than one (1) special election shall be held for such purposes by the same city, town, or county during any particular calendar year.

(iv) The cost incurred by the city, town, or county involved in conducting each special election pursuant to the franchise holder's request shall be paid by the franchise holder. The election shall be held and conducted under the general election laws of the state, except as otherwise provided in this section.

(C) The ordinance shall set forth the ballot question substantially as follows:

"For wagering on electronic games of skill conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] []

Against wagering on electronic games of skill conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] []

As authorized by Arkansas Code Section 23-113-201, the question presented is whether or not wagering on electronic games of skill may be conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] under the provisions of Chapter 113 of Title 23 of the Arkansas Code. Vote for or against the question by marking the appropriate box above. 'Electronic games of skill' means games played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment when the outcome is not completely controlled by chance alone."

(D) Notice of the election shall be given by the clerk of the city, town, or county involved by one (1) publication in a newspaper having general circulation within the city, town, or county involved not less than ten (10) calendar days before the election. No other publication or posting of a notice by any other public official shall be required.

(E) The election shall be held no earlier than thirty-one (31) calendar days, and no later than one hundred twenty (120) calendar days, after the effective date of the ordinance in which the election is called by the governing body.

(F)(i) Within thirty (30) calendar days after completion of the tabulation of the votes, the mayor of the city or town or the county judge of the county, as the case may be, shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the city, town, or county involved.

(ii) The results of the election as stated in the proclamation shall be conclusive unless a suit contesting the proclamation is filed in the circuit court in the county where the election took place within twenty (20) calendar days after the date of publication of the proclamation.

(G) If the wagering on electronic games of skill is approved at any election as provided in this section, that approval shall be final and shall continue in effect thereafter as long as wagering on electronic games of skill at the location involved is authorized by the other provisions of this chapter, other than this section.

(b)(1) In order to conduct wagering on electronic games of skill during a calendar year, the franchise holder must have been licensed by the Arkansas Racing Commission to conduct a live racing meet within the calendar year or the immediately preceding calendar year of either:

(A) Horse racing under the Arkansas Horse Racing Law, § 23-110-101 et seq.; or

(B) Greyhound racing under the Arkansas Greyhound Racing Law, § 23-111-101 et seq.

(2) However, the commission may waive the requirement of subdivision (b)(1) of this section if the license was not issued because of events such as fire, storm, accident or other casualty, epidemic, shortages of horses or greyhounds, war, sabotage, acts of a public enemy, civil disturbances, strikes, labor disputes, work stoppages, or similar events.

(c)(1) Wagering on electronic games of skill conducted by a franchise holder in accordance with this chapter shall be lawful, notwithstanding any laws or parts of laws of the State of Arkansas to the contrary.

(2) However, this chapter is not intended to authorize a lottery or the sale of lottery tickets prohibited by Arkansas Constitution, Article 19, § 14.

(d)(1) In order to constitute an electronic game of skill under this chapter, the game must not be completely controlled by chance alone.

(2) A game is not completely controlled by chance alone if the betting public may attain through the exercise of skill or judgment a better measure of success in playing the game than could be mathematically expected on the basis of pure luck, that is, on the basis of pure random chance alone.

(e) For each electronic game of skill, the commission shall provide by appropriate rule or regulation the specifications for establishing that

patrons, in the aggregate, exercising some degree of skill or judgment, over the expected lifetime of the electronic game of skill, will obtain a payout of at least eighty-three percent (83%) of the aggregate amounts wagered on the electronic game of skill.

(f)(1) Prior to conducting wagering on an electronic game of skill, the franchise holder shall present to the commission:

(A) A complete description of the game and the electronic device or machine to be utilized in the play of the game, the proposed rules of play, and such further information as the commission determines is necessary or appropriate in order to effectively carry out its regulatory functions in accordance with this chapter; and

(B) Evidence of anticipated economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, which may result, directly or indirectly, from the authorization of wagering on the electronic game of skill.

(2)(A) Within sixty (60) calendar days after the submission of the information required by subdivision (f)(1) of this section, the commission shall make a finding as to whether:

(i) The game and electronic device or machine constitutes an electronic game of skill authorized by this chapter; and

(ii) Economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, may result, directly or indirectly, from the authorization of wagering on the electronic game of skill.

(B) The finding shall further either approve the proposed rules of play or recommend modifications as the commission determines are necessary in the public interest in carrying out its regulatory functions in accordance with this chapter.

(3) The franchise holder may commence conducting wagering on the electronic game of skill subject to the other provisions of this chapter and other applicable rules of the commission adopted pursuant to this chapter if:

(A) The finding concludes that:

(i) Economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, may result, directly or indirectly, from the authorization of wagering on the electronic game of skill; and

(ii) The game and electronic device or machine constitutes an electronic game of skill authorized by this chapter; and

(B) The commission approves the rules of play or, if applicable, the franchise holder incorporates the changes recommended by the commission into the final rules of play.

(4) If the finding concludes that the game and electronic device or machine does not constitute an electronic game of skill authorized by this chapter, recommends changes in the proposed rules of play, or

concludes that neither direct nor indirect economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, will result from the authorization of wagering on the electronic game of skill, the commission shall provide the franchise holder with the opportunity for a hearing by the commission before the finding is made final by the commission.

(g) Wagers on electronic games of skill may be made only by individuals physically present at the location on the grounds of the franchise holder's authorized racetrack park site as set forth in subsection (a) of this section where electronic games of skill are located and being operated in accordance with this chapter.

(h) No individual under twenty-one (21) years of age shall be intentionally allowed to place wagers on electronic games of skill, and the commission shall provide by rule or regulation appropriate supervisory procedures for franchise holders to follow in order to safeguard against individuals under twenty-one (21) years of age placing wagers on electronic games of skill.

History. Acts 2005, No. 1151, § 1.

CASE NOTES

Delegation of Authority.

Authority was not unlawfully delegated to the Arkansas Racing Commission when the legislature directed the Commission in subdivision (f)(2)(A)(i) of this section to make a finding as to whether a game and electronic device or machine constituted an electronic game of skill. Gallas v. Alexander, 371 Ark. 106, 263 S.W.3d 494 (2007).

Subchapter 3 — Arkansas Racing Commission

SECTION.
23-113-301. Jurisdiction of Arkansas Racing Commission.
23-113-302. Powers and duties.
23-113-303. Licenses for employees and suppliers.
23-113-304. Hearings.

Effective Dates. Acts 2007, No. 856, § 6: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Racing Commission is responsible for licensing individuals and businesses that wish to be involved in conducting electronic games of skill and thoroughbred horse and greyhound racing in the State of Arkansas; that there is an immediate need for the Arkansas Racing Commission to obtain state and federal background investigations for potential licensees; and that this act provides the necessary authorization for the Arkansas Racing Commission to obtain the background investigations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-113-301. Jurisdiction of Arkansas Racing Commission.

Subject to the limitations and conditions in this chapter or other applicable law, the Arkansas Racing Commission shall have full administrative regulatory jurisdiction over the business of electronic games of skill and wagering thereon conducted by franchise holders under this chapter.

History. Acts 2005, No. 1151, § 1.

23-113-302. Powers and duties.

(a) In addition to all other duties, powers, and responsibilities conferred upon it by other laws of this state, the Arkansas Racing Commission shall exercise the duties, powers, and responsibilities over electronic games of skill and wagering on the electronic games of skill as authorized in this chapter, and without necessarily being limited to the following enumeration, but subject to the other provisions of this chapter, the commission shall:

(1) Regulate the specific games, devices, machines, and equipment played and utilized in connection with wagering on electronic games of skill and the rules of play and methods of operation thereof as contemplated by this chapter, as well as appropriate security and surveillance systems, in order to safeguard fairness and integrity in the conduct and operation of electronic games of skill and wagering on the electronic games of skill;

(2) Regulate the specific times of operation and specific areas on the premises of the franchise holder's racetrack park site where wagering on electronic games of skill may be conducted;

(3) Prescribe the procedures for issuing licenses to employees of the franchise holder conducting electronic games of skill and wagering on the electronic games of skill, including, without limitation, the information to be submitted by the individuals in connection with their background, employment, experience, and character, as reasonably necessary to determine the individuals' qualifications and suitability for the position;

(4) Prescribe the procedures for issuing licenses to persons supplying electronic games of skill to the franchise holder, including, without limitation, the information to be submitted by the persons in connection with their background, experience, character, business activities, and financial affairs, as reasonably necessary to determine the persons' qualifications and suitability for supplying electronic games of skill to franchise holders for use in accordance with this chapter;

(5) Have authority to enter upon the premises where electronic games of skill are being operated and to observe the conduct of wagering thereon; and

(6) Take such other action not inconsistent with law as the commission may deem necessary or desirable in order to supervise and regulate and to effectively control in the public interest the operation of

electronic games of skill and conduct of wagering thereon as authorized by this chapter.

(b) The commission may promulgate, revise, amend, and repeal rules, regulations, and orders, consistent with the policy, objects, and purposes of this chapter, as it reasonably deems necessary or desirable in the public interest in carrying out the provisions of this chapter.

History. Acts 2005, No. 1151, § 1.

23-113-303. Licenses for employees and suppliers.

(a) The Arkansas Racing Commission may require persons employed by the franchise holder in the conduct of wagering on electronic games of skill to obtain a license from the commission under procedures generally consistent with the licensing procedures otherwise applicable to other employees of the franchise holder engaged in the conduct of pari-mutuel wagering on horse racing or greyhound racing, as the case may be.

(b)(1) No person may sell or otherwise supply electronic games of skill to a franchise holder for the conduct of wagering thereon as authorized in this chapter or provide repair or other services to electronic games of skill unless the person has:

(A) Demonstrated to the satisfaction of the commission that the person has the capability and qualifications necessary to reasonably furnish the equipment and perform the services to be provided by the supplier; and

(B) Obtained a license from the commission.

(2) Each supplier shall pay to the commission an annual license fee in the amount of one thousand dollars ($1,000) for each year or part thereof that the license is in effect.

(c)(1)(A) An applicant shall be fingerprinted to determine an applicant's suitability to be issued a franchise holder employee license, supplier license, or service license.

(B) The fingerprints shall be forwarded by the commission to the Department of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background check, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Department of Arkansas State Police to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background check and the national criminal history record check to the commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national

criminal history record check shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (c)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background check or national criminal history record check shall be required of applicants for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

(d) Any person knowingly making a false statement on an employee or supplier license application under this chapter shall be guilty of a Class A misdemeanor.

History. Acts 2005, No. 1151, § 1; 2007, No. 856, § 5.

23-113-304. Hearings.

(a)(1) If any franchise holder or other person is aggrieved by any action of the Arkansas Racing Commission, the franchise holder or other person shall be entitled to a hearing by the commission.

(2) The hearings shall be conducted in accordance with the rules and procedures governing other commission hearings.

(b)(1) At the conclusion of the hearing, the commission shall make its findings to be the basis for the action taken by the commission.

(2) The findings and orders of the commission shall be subject to review in Pulaski County Circuit Court, from which an appeal may be taken to the Supreme Court.

History. Acts 2005, No. 1151, § 1.

Subchapter 4 — Contribution to Purses and Promotion of Arkansas Thoroughbred and Greyhound Breeding Activities

SECTION.

23-113-401. Contribution to purses and promotion of Arkansas thoroughbred and greyhound breeding activities.

23-113-401. Contribution to purses and promotion of Arkansas thoroughbred and greyhound breeding activities.

(a) An amount equal to fourteen percent (14%) of the net wagering revenues from electronic games of skill shall be set aside by the franchise holder in a separate account and used only for purses for live horse racing or live greyhound racing conducted by the franchise holder, as the case may be.

(b) With respect to a franchise holder operating a franchise to conduct horse racing, an amount equal to one percent (1%) of the net wagering revenues from electronic games of skill conducted by the horse racing franchise holder shall be paid by the franchise holder to the Arkansas Racing Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards, and stallion awards as provided in § 23-110-409 in order to promote and encourage thoroughbred horse breeding activities in Arkansas.

(c) With respect to a franchise holder operating a franchise to conduct greyhound racing, an amount equal to one percent (1%) of the net wagering revenues from electronic games of skill conducted by the greyhound racing franchise holder shall be paid by the franchise holder to the commission to be used for breeders' awards as provided in the commission's rules and regulations governing greyhound racing in Arkansas in order to promote and encourage greyhound breeding activities in Arkansas.

(d)(1) The dedication of net wagering revenues from electronic games of skill to purses and breeding activities as set forth in this section shall not be subject to any contract or agreement between the franchise holder and any organization representing horsemen or greyhound owners or trainers, to the end that any such contractual obligations for the use of moneys for purses shall not apply to the funds dedicated to purses and breeding activities as set forth in this section.

(2) The moneys dedicated to purses and breeding activities as set forth in this section are intended to be in addition to any such contractual purse obligations affecting moneys other than the amounts dedicated to purses and breeding activities as set forth in this section, as well as in addition to amounts required to be used for purses and breeding activities under applicable provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., as the case may be.

(e) The commission shall have jurisdiction to check and verify compliance by the franchise holder with the provisions of this section and shall make periodic determinations as to compliance under rules and regulations adopted by the commission.

History. Acts 2005, No. 1151, § 1.

Subchapter 5 — Privilege Fees

SECTION.
23-113-501. Privilege fees.

23-113-501. Privilege fees.

(a) Franchise holders conducting wagering on electronic games of skill under this chapter shall pay the following fees for the privilege of conducting the wagering:

(1) An amount equal to eighteen percent (18%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the Director of the Department of Finance and Administration for disposition under § 23-113-604;

(2) An amount equal to one-half of one percent (0.5%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the county in which the franchise holder is operating the electronic games of skill; and

(3) An amount equal to one and one-half percent (1.5%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the city or town in which the franchise holder is operating the electronic games of skill.

(b) The privilege fees shall be paid on a monthly basis pursuant to rules and procedures adopted by the director. It shall be the duty of a franchise holder on or before the twentieth day of each month to deliver to the director upon forms prescribed and furnished by the director a return under oath showing the total net wagering revenues from electronic games of skill during the preceding calendar month.

(c) The privilege fees levied by this section are in lieu of any state or local gross receipts, sales, or other similar taxes, and to this end the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., shall not be applicable to gross receipts derived by franchise holders from wagering on electronic games of skill.

(d) The privilege fee payable to the director under subdivision (a)(1) of this section shall be administered by the director pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq. However, regulatory authority over licensing and other matters under this chapter not relating to the administration, payment, and collection of the privilege fee shall remain with the Arkansas Racing Commission.

History. Acts 2005, No. 1151, § 1.

Subchapter 6 — Miscellaneous

SECTION.
23-113-601. Duty to maintain records.
23-113-602. Inconsistent statutes inapplicable.
23-113-603. Pari-mutuel wagering on horse racing and greyhound racing.
SECTION.
23-113-604. Disposition of privilege fees, license fees, etc.

23-113-601. Duty to maintain records.

A franchise holder operating electronic games of skill and conducting wagering thereon under this chapter shall keep a complete set of books and records as necessary to show fully the activities and transactions of the franchise holder with respect to the operations and wagering conducted in accordance with this chapter, and the Arkansas Racing Commission shall have reasonable access to the books and records in

order to verify compliance with the provisions of this chapter and the rules and regulations of the commission.

History. Acts 2005, No. 1151, § 1.

23-113-602. Inconsistent statutes inapplicable.

(a) Section 5-66-101 et seq. and all other laws and parts of laws inconsistent with any of the provisions of this chapter are expressly declared not to apply to any person engaged in, conducting, or otherwise participating in operating electronic games of skill or wagering thereon as authorized by this chapter.

(b) No person shall be guilty of any criminal offense set forth in § 5-66-101 et seq. or any other law relating to illegal gambling to the extent the person relied on any rule, order, finding, or other determination by the Arkansas Racing Commission that the activity was authorized by this chapter.

History. Acts 2005, No. 1151, § 1.

23-113-603. Pari-mutuel wagering on horse racing and greyhound racing.

(a) Pari-mutuel wagering on horse racing and greyhound racing, whether on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means, shall continue to be governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., respectively, and not by this chapter.

(b)(1) Provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., prohibiting wagering other than on horse or greyhound races and other than under the pari-mutuel or certificate method of wagering shall not apply to wagering on electronic games of skill conducted pursuant to this chapter, and to this end the provisions of § 23-110-405(d)(1) and (2), § 23-111-508(b), § 23-111-508(d)(1) and (2), § 23-111-508(d)(4), and any other inconsistent provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., shall not apply to wagering on electronic games of skill conducted in accordance with this chapter.

(2) Wagering under this chapter is not required to be pari-mutuel.

History. Acts 2005, No. 1151, § 1.

23-113-604. Disposition of privilege fees, license fees, etc.

(a) All privilege fees received by the Director of the Department of Finance and Administration under this chapter for the benefit of the state shall be deposited into the State Treasury as general revenues.

(b) All permit or license fees, penalties, and fines received by the Arkansas Racing Commission under this chapter shall be deposited into the State Treasury as general revenues.

History. Acts 2005, No. 1151, § 1.

CHAPTER 114

CHARITABLE BINGO AND RAFFLES ENABLING ACT

SUBCHAPTER.

1. General Provisions.
2. Administration.
3. Licensing.
4. Operation Of Games Of Bingo And Raffles.
5. Bingo And Raffle Accounts.
6. Excise Tax.
7. Enforcement.

Effective Dates. Acts 2009, No. 499, § 13: Mar. 24, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law imposes a burdensome tax on licensed authorized bingo organizations, that the tax produces revenues that far exceed funds necessary to administer and enforce bingo and raffle laws in this state, and that the tax should be reduced as soon as possible to relieve the burden on licensed authorized organizations and advance the charitable interests served by bingo games. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Subchapter 1 — General Provisions

SECTION.

23-114-101. Short title.
23-114-102. Definitions.
23-114-103. General provisions.
23-114-104. Penalty.

23-114-101. Short title.

This chapter shall be known and may be cited as the "Charitable Bingo and Raffles Enabling Act".

History. Acts 2007, No. 388, § 1.

23-114-102. Definitions.

As used in this chapter:

(1)(A) "Authorized organization" means an organization eligible for a license to conduct games of bingo and raffles that is a nonprofit

tax-exempt religious, educational, veterans, fraternal, service, civic, medical, volunteer rescue service, volunteer firefighters organization, or volunteer police organization that has been in continuing existence as a nonprofit tax-exempt organization in this state for a period of not less than five (5) years immediately prior to conducting the game of bingo or raffles.

(B) A nonprofit tax-exempt instrumentality of the United States Government is a service agency for the purpose of this subdivision (1);

(2)(A) "Bingo equipment" means equipment and supplies used, made, or sold for the purpose of use in bingo.

(B) "Bingo equipment" includes:

(i) A machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) A bingo face;

(iii) A bingo ball; and

(iv) Any other device commonly used in the direct operation of a bingo game.

(C) "Bingo equipment" is not intended and shall not be construed to permit the participants to play the game through:

(i) Any electronic device or machine; or

(ii) A pull-tab bingo ticket.

(D) "Bingo equipment" does not include:

(i) A bingo game set commonly manufactured and sold as a child's game for a retail price of twenty dollars ($20.00) or less, unless the set or a part of the set is used in a game of bingo subject to regulation under this chapter; or

(ii) A commonly available component part of bingo equipment such as a light bulb or fuse;

(3) "Bingo face" means a disposable flat piece of paper that may be used one (1) time and that cannot be reused after the game in which the bingo face was used has ended. The bingo face is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter, or combination of numbers and letters, and with one (1) or more squares designated as a "free" space;

(4) "Bingo session" means all activities incidental to the conduct of a series of games of bingo by a licensed authorized organization, beginning when the first game of bingo of a bingo session is commenced by calling the first bingo ball drawn, such session not to exceed five (5) consecutive hours during any one (1) twenty-four-hour calendar day;

(5) "Charitable purpose" means a purpose described by § 23-114-504;

(6) "Department" means the Department of Finance and Administration;

(7) "Director" means the Director of the Department of Finance and Administration;

(8) "Distributor" means a person or business entity that sells, markets, or otherwise provides bingo equipment to a licensed authorized organization;

(9)(A) "Game of bingo" means a single game of the activity commonly known as "bingo" in which the participants pay a sum of money for the use of one (1) or more bingo faces.

(B) "Game of bingo" includes only a game in which the winner receives a preannounced, fixed-dollar prize and in which the winner is determined by the matching of letters and numbers on a bingo face imprinted with at least twenty-four (24) numbers, with letters and numbers appearing on objects randomly drawn and announced by a caller, in contemporaneous competition among all players in the game;

(10) "Gross receipts" means the total amount received from the sale of raffle tickets and the sale, rental, transfer, or use of bingo faces and entrance fees charged at premises at which games of bingo or raffles are conducted without any deduction on account of prizes paid, losses, or any other expenses whatsoever;

(11) "Licensed authorized organization" means an authorized organization that holds a license to conduct games of bingo or raffles;

(12) "Manufacturer" means a person or business entity that produces finished bingo equipment from raw materials, supplies, or subparts and that sells, markets, or otherwise provides such equipment to a licensed distributor;

(13) "Person" means any individual, company, partnership, limited liability company, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other private entity;

(14) "Premises" means the area subject to the direct control of and actual use by a licensed authorized organization to conduct games of bingo. "Premises" includes a location or place;

(15) "Primary business office" means the Arkansas location at which all records relating to the primary purpose of a licensed authorized organization are maintained in the ordinary course of business;

(16)(A) "Raffle" means the selling of tickets to win a prize awarded though a random drawing.

(B) "Raffle" does not include any game played through the use of a machine or electronic device; and

(17) "Responsible person" means the person or persons within a licensed authorized organization that are responsible for organizing, conducting, and otherwise administering the licensed authorized organization's raffles or bingo sessions.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 1.

Amendments. The 2009 amendment redesignated (1)(E) as (3) and redesignated the subsequent subdivisions accordingly; deleted "with the word 'Arkansas' and a facsimile outline of a map of Arkansas on the space" following "'free' space" in (3); subdivided (16); deleted (17); and made related and minor stylistic changes.

23-114-103. General provisions.

(a) The game of bingo or a raffle conducted by a licensed authorized organization shall not be a lottery prohibited by Arkansas Constitution, Article 19, § 14, if all net receipts over and above the actual cost of conducting the game of bingo or raffle are used only for charitable, religious, or philanthropic purposes.

(b)(1) No net receipts from games of bingo or raffles shall be used to compensate in any manner any person who works for or is in any way affiliated with the licensed authorized organization.

(2)(A) Charitable bingo or raffles shall only be conducted by a licensed authorized organization through its bona fide officers and members who volunteer their time and receive no compensation for their services.

(B) A licensed authorized organization shall not conduct games of bingo or raffles through any agent or third party.

(c) The provisions of this chapter are not intended and shall not be construed to allow the play of games of bingo or raffles through any electronic device or machine.

History. Acts 2007, No. 388, § 1.

23-114-104. Penalty.

(a)(1) A violation of this chapter by a licensed authorized organization is a violation punishable by a fine not to exceed five thousand dollars ($5,000).

(2) A second or subsequent offense is a violation punishable by a fine not to exceed ten thousand dollars ($10,000).

(b) A person who conducts a game of bingo or a raffle without a license under this chapter shall be subject to the same penalties as provided under § 5-66-118, concerning lotteries.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 16.

Amendments. The 2009 amendment substituted "a violation" for "an unclassified misdemeanor and shall be" in (a)(1) and (a)(2).

Subchapter 2 — Administration

SECTION.
23-114-201. Control and supervision of games of bingo and raffles.
23-114-202. Approval of bingo faces and raffle tickets.
23-114-203. Rulemaking authority.

23-114-201. Control and supervision of games of bingo and raffles.

(a) The Director of the Department of Finance and Administration shall administer this chapter under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) The director has authority over all games of bingo and raffles conducted in this state so that games of bingo and raffles are fairly conducted and the proceeds derived from games of bingo and raffles are used only for an authorized purpose.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 2.

Amendments. The 2009 amendment substituted "authority" for "broad authority and shall exercise strict control and close supervision" in (b); deleted (c); and made related and minor stylistic changes.

23-114-202. Approval of bingo faces and raffle tickets.

(a) The Director of the Department of Finance and Administration by rule shall provide for the form of bingo faces and raffle tickets used in the State of Arkansas.

(b)(1) All bingo faces must be purchased by the licensed authorized organization from a distributor licensed under this chapter.

(2) Only one (1) game shall be played on each bingo face.

(c)(1) All bingo faces and raffle tickets shall be preprinted on paper or plastic.

(2) Electronic devices, machines, or facsimiles shall not be used as bingo faces, raffle tickets, or otherwise, by participants of games of bingo or raffles conducted under this chapter.

(d) All bingo faces and raffle tickets shall be sequentially numbered at the time of printing.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 3.

Amendments. The 2009 amendment, in (a), substituted "for the form of" for "procedures for the approval of" and inserted "used in the State of Arkansas"; in (b), deleted (b)(1) and redesignated the subsequent subdivisions accordingly; subdivided (c) and deleted "in a form approved by the director" following "plastic" in (c)(1); and made minor stylistic changes.

23-114-203. Rulemaking authority.

The Director of the Department of Finance and Administration may adopt rules to aid in the enforcement and administration of this chapter.

History. Acts 2007, No. 388, § 1.

Subchapter 3 — Licensing

SECTION.
23-114-301. Authorized organization license.
23-114-302. License fees — Authorized organizations.
23-114-303. License application — Authorized organizations.
23-114-304. License application — Distributors and manufacturers.
23-114-305. Denial, suspension, or revocation of licenses.
23-114-306. Display of license.
23-114-307. Licenses and fees — Distributors and manufacturers.
23-114-308. [Repealed.]

23-114-301. Authorized organization license.

The Department of Finance and Administration may license an entity that is an authorized organization.

History. Acts 2007, No. 388, § 1.

23-114-302. License fees — Authorized organizations.

(a) An authorized organization license to conduct games of bingo and raffles may be issued to an authorized organization and is subject to renewal on an annual basis. The annual fee for this license shall be one hundred dollars ($100).

(b) In lieu of the annual license issued under subsection (a) of this section, an authorized organization, at its request, may be issued one (1) or more of the following temporary authorized organization licenses:

(1) A temporary license to conduct one (1) bingo session. The fee for this temporary license is twenty-five dollars ($25.00);

(2) A temporary license, to be known as a "Class I temporary raffle license", to conduct one (1) raffle other than a raffle under subdivision (b)(3) of this section. The fee for this temporary license is twenty-five dollars ($25.00); and

(3) A temporary license, to be known as a "Class II temporary raffle license", to conduct one (1) raffle in which the total prize package to be given away has been donated and has a total value of less than five thousand dollars ($5,000). The fee for this temporary license is ten dollars ($10.00).

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 4.

Amendments. The 2009 amendment substituted "five thousand dollars ($5,000)" for "five hundred dollars ($500)" in (b)(3).

23-114-303. License application — Authorized organizations.

(a) An applicant for an authorized organization license shall file a written verified application with the Department of Finance and Administration on a form prescribed by the Department of Finance and Administration.

(b) The license application shall include:

(1) The name and address of the applicant;

(2) A designation and address of the premises intended to be used for a raffle or bingo session;

(3) The name and address of the person or persons within the authorized organization who will be responsible for organizing, conducting, and otherwise administering the raffle or bingo sessions;

(4) If the premises upon which a raffle or bingo session will be conducted has been leased by the authorized organization, a copy of the lease agreement; and

(5) A statement that the applicant complies with the conditions for eligibility for the license.

(c) The responsible person within an authorized organization shall meet the following requirements:

(1) The responsible person shall not have been found guilty of or pleaded guilty or no contest to:

(A) Any felony by any court in the State of Arkansas; or

(B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

(2)(A) In order to determine a responsible person's suitability to organize, conduct, and administer raffles and bingo sessions, the Director of the Department of Finance and Administration may require that the responsible person be fingerprinted and the fingerprints forwarded for a criminal background check through the Department of Arkansas State Police.

(B) After the completion of the criminal background check through the Department of Arkansas State Police, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check; and

(3) The responsible person shall sign a release that allows the Department of Arkansas State Police to release:

(A) An Arkansas noncriminal justice background check to the Department of Finance and Administration; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

(d)(1) Before the renewal of an annual license, the licensed authorized organization shall report the following information:

(A) The amount of the total gross receipts derived from games of bingo and raffles;

(B) The net proceeds derived from games of bingo and raffles;

(C) The use to which the proceeds have been or are to be applied; and

(D) If requested by the director, a list of expenses paid or incurred.

(2) A licensed authorized organization shall maintain records to substantiate the contents of the report required by this subsection.

History. Acts 2007, No. 388, § 1; 2009, No. 164, §§ 17, 18.

Amendments. The 2009 amendment substituted "organization" for "agent" in (b)(4); and inserted "licensed" in (d)(1).

23-114-304. License application — Distributors and manufacturers.

(a) An applicant for a distributor license or a manufacturer license shall file a written verified application with the Department of Finance and Administration on a form prescribed by the Department of Finance and Administration.

(b) The license application shall include:

(1) The name, address, and federal employer identification number of the applicant;

(2) The names and positions of the applicant's officers;

(3) The name and address of the person or persons who are responsible for the applicant's sales of bingo equipment; and

(4) A statement that the applicant complies with the conditions for eligibility for the license.

(c) The person or persons who are responsible for the applicant's sales of bingo equipment shall meet the following requirements:

(1) The person or persons shall not have been found guilty of or pleaded guilty or no contest to:

(A) Any felony by any court in the State of Arkansas; or

(B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

(2)(A) In order to determine the person's or persons' suitability to be involved in the sale of bingo equipment, the Director of the Department of Finance and Administration may require that the person or persons be fingerprinted and the fingerprints forwarded for a criminal background check through the Department of Arkansas State Police.

(B) After the completion of the criminal background check through the Department of Arkansas State Police, the fingerprints shall be forwarded by the Department of Arkansas State Police to the Federal Bureau of Investigation for a national criminal history record check; and

(3) The person or persons responsible for an applicant's sales of bingo equipment shall sign a release that allows the Department of Arkansas State Police to release the following:

(A) An Arkansas noncriminal justice background check to the Department of Finance and Administration; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

History. Acts 2007, No. 388, § 1.

23-114-305. Denial, suspension, or revocation of licenses.

(a) All proceedings for the suspension and revocation of the license issued to a manufacturer, a distributor, or an authorized organization under this chapter shall be before the Department of Finance and Administration.

(b) The department may deny an application for a license, or for the renewal of a license issued under this chapter if it determines that issuing the license would violate any provisions of this chapter.

(c) The proceedings shall be conducted in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2007, No. 388, § 1.

23-114-306. Display of license.

A licensed authorized organization shall conspicuously display a license issued under this chapter at the premises at which a raffle or a game of bingo is conducted at all times during the conduct of the raffle or the game of bingo.

History. Acts 2007, No. 388, § 1.

23-114-307. Licenses and fees — Distributors and manufacturers.

(a) A distributor license may be issued to a distributor of bingo equipment and is subject to renewal on an annual basis. The annual fee for this license shall be two thousand five hundred dollars ($2,500).

(b) A manufacturer license may be issued to a manufacturer of bingo equipment and is subject to renewal on an annual basis. The annual fee for this license shall be two thousand five hundred dollars ($2,500).

History. Acts 2007, No. 388, § 1.

23-114-308. [Repealed.]

Publisher's Notes. This section, concerning failure to file excise tax reports, was repealed by Acts 2009, No. 499, § 5. The section was derived from Acts 2007, No. 388, § 1.

Subchapter 4 — Operation Of Games Of Bingo And Raffles

SECTION.
23-114-401. Bingo premises — Sale of raffle tickets.
23-114-402. Restrictions on premises and equipment providers.
23-114-403. Compensation prohibited.
23-114-404. Admission to games of bingo.
23-114-405. Raffle and bingo records.
23-114-406. Gift certificates.
23-114-407. Bingo sessions.
23-114-408. Prizes.
23-114-409. Purchase of bingo equipment.

23-114-401. Bingo premises — Sale of raffle tickets.

(a)(1) Games of bingo shall not be conducted at more than one (1) premises on property owned or leased by a licensed authorized organization.

(2)(A) No more than two (2) organizations may conduct bingo games at the same premises so long as that premises is owned or leased by a licensed authorized organization.

(B) No more than four (4) bingo sessions shall be conducted at the same premises during any one (1) calendar week.

(3) Games of bingo under this chapter shall not be conducted through any system that links the games of bingo or participants at one (1) premises location to any other premises or participants.

(4) All participants in games of bingo shall be physically present in person at the authorized premises in a single facility in order to play a game of bingo under this chapter.

(b)(1) The conduct of raffles is not limited to property owned or leased by a licensed authorized organization, but shall be conducted pursuant to the rules of the Department of Finance and Administration.

(2) Raffle tickets may be sold:

(A) At the authorized premises of the licensed authorized organization; and

(B) Off the authorized premises of the licensed authorized organization if the tickets are sold by uncompensated volunteers of the licensed authorized organization.

(3) No raffle ticket shall be sold through the mail or through the Internet, email, fax, telephone, or any other electronic means.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 6.

Amendments. The 2009 amendment rewrote (a)(2).

23-114-402. Restrictions on premises and equipment providers.

A person shall not lease or otherwise make a premises or equipment available for conducting a raffle or a game of bingo for any direct or indirect consideration in excess of the bona fide reasonable fair market rental value of the premises or equipment, and no portion of the consideration for premises or equipment shall be based upon a percentage or specified portion of the revenue or profit from games of bingo or raffles conducted by a licensed authorized organization.

History. Acts 2007, No. 388, § 1.

23-114-403. Compensation prohibited.

No person may be compensated for organizing, promoting, conducting, or otherwise administering a charitable raffle or bingo event. The functions of organizing, promoting, conducting, or otherwise administering a charitable raffle or bingo event shall be performed by volunteers from the charitable organization.

History. Acts 2007, No. 388, § 1.

23-114-404. Admission to games of bingo.

(a) A person shall not be denied admission to a raffle or a game of bingo or the opportunity to participate in a raffle or a game of bingo because of race, color, creed, religion, national origin, sex, or disability or because the person is not a member of the licensed authorized organization conducting the raffle or game of bingo.

(b) No individual under eighteen (18) years of age may play a game of bingo or purchase raffle tickets from a licensed authorized organization.

History. Acts 2007, No. 388, § 1.

23-114-405. Raffle and bingo records.

(a)(1) A licensed authorized organization shall provide to the Director of the Department of Finance and Administration at the time of application for license the address of its primary business office.

(2) If the licensed authorized organization maintains its raffle and bingo records at a location other than the primary business office, the licensed authorized organization shall provide the address of the location where the records are maintained.

(b) Bingo and raffle records shall be maintained in Arkansas in accordance with generally accepted accounting practices.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 7.

Amendments. The 2009 amendment subdivided (a); inserted "in accordance with generally accepted accounting practices" in (b); and deleted (c).

23-114-406. Gift certificates.

(a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to participate in a raffle or play a game of bingo conducted by the licensed authorized organization.

(b) A licensed authorized organization that sells or redeems a gift certificate shall keep adequate records relating to the gift certificate.

History. Acts 2007, No. 388, § 1.

23-114-407. Bingo sessions.

(a)(1) A bingo session begins when the first game of bingo of the bingo session is commenced by calling the first bingo ball drawn.

(2) A licensed authorized organization may conduct one (1) bingo session per calendar day and shall not exceed two (2) bingo sessions during any one (1) calendar week.

(b) A bingo session shall not exceed five (5) consecutive hours during any one (1) twenty-four-hour calendar day.

History. Acts 2007, No. 388, § 1.

23-114-408. Prizes.

(a) A bingo prize shall not have a value of more than one thousand dollars ($1,000) for a single game.

(b) For the total prizes of all games of bingo, a licensed authorized organization shall not offer or award during a single bingo session prizes with an aggregate value of more than seven thousand five hundred dollars ($7,500).

(c)(1) A licensed authorized organization shall not award or offer to award a door prize with a value of more than two hundred fifty dollars ($250) per bingo session.

(2) The value of the door prize under subdivision (c)(1) of this section shall not accrue against the bingo session prize limitation of seven thousand five hundred dollars ($7,500).

(d)(1) A bingo prize, other than cash, may be merchandise with a recognized wholesale cost not to exceed one thousand dollars ($1,000).

(2) A copy of the receipt for merchandise under subdivision (d)(1) of this section shall be maintained in the licensed authorized organization's bingo records.

(e)(1) Except as otherwise provided in subdivision (e)(2) of this section, the total value of raffle prizes in a calendar year shall not exceed fifty thousand dollars ($50,000).

(2) If the prizes were donated to the licensed authorized organization, the total value of raffle prizes in a calendar year shall not exceed one hundred thousand dollars ($100,000), except as applicable to a temporary license to conduct a raffle under § 23-114-302(b)(3).

(f)(1) A raffle prize shall not exceed five thousand dollars ($5,000) in cash.

(2) As used in this subsection, "cash" means coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 8.

Amendments. The 2009 amendment subdivided (c) and (d); substituted "five thousand dollars ($5,000)" for "five hundred dollars ($500)" in (f)(1); and made minor stylistic changes.

23-114-409. Purchase of bingo equipment.

Licensed authorized organizations shall purchase bingo equipment only from distributors licensed under this chapter. Distributors that wish to sell bingo equipment to licensed authorized organizations within this state shall purchase bingo equipment only from manufacturers licensed under this chapter.

History. Acts 2007, No. 388, § 1.

Subchapter 5 — Bingo And Raffle Accounts

SECTION.
23-114-501. Bingo and raffle accounts.
23-114-502. Withdrawals from a bingo and raffle account.
23-114-503. Authorized uses of a bingo and raffle account.
23-114-504. Use of net proceeds for charitable purposes.
23-114-505. Use of proceeds by a licensed authorized organization.
23-114-506. Items of bingo and raffle expense.
23-114-507. Expenses paid from bingo and raffle account.

23-114-501. Bingo and raffle accounts.

(a)(1) A licensed authorized organization with gross receipts from raffles or games of bingo in excess of five hundred dollars ($500) per

month shall establish and maintain one (1) regular checking account designated as the bingo and raffle account.

(2) A licensed authorized organization may also maintain an interest-bearing savings account designated as the bingo and raffle savings account.

(b)(1) A licensed authorized organization shall deposit into the bingo and raffle account all funds derived from the conduct of games of bingo and raffles, less the amount awarded as cash prizes. Except as provided by subdivision (b)(2) of this section, a deposit shall be made not later than the next business day after the day of the raffle or bingo session on which the receipts were obtained.

(2) A licensed authorized organization may deposit funds derived from the conduct of a raffle or games of bingo that are paid through a debit card transaction into the bingo fund not later than seventy-two (72) hours after the transaction.

(c)(1) A licensed authorized organization may lend money from its general fund to its bingo and raffle account.

(2) Except as provided by this section, no other funds may be deposited into the bingo and raffle account.

(d) Except as provided in subsection (c) of this section, a licensed authorized organization shall not commingle gross receipts derived from the conduct of games of bingo and raffles with other funds of the organization.

(e) Except as permitted, the licensed authorized organization shall not transfer gross receipts to another account maintained by the licensed authorized organization.

(f) A licensed authorized organization shall maintain all of its savings and checking accounts established under this section in a financial institution in this state.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 9.

Amendments. The 2009 amendment subdivided (c), and deleted "if the organization requests and receives the prior approval of the Department of Finance and Administration" in (c)(1); inserted "Except as provided in subsection (c) of this section" in (d); and made related changes.

23-114-502. Withdrawals from a bingo and raffle account.

(a)(1) Funds from the bingo and raffle account shall be withdrawn by preprinted, consecutively numbered checks or withdrawal slips, signed by an authorized representative of the licensed authorized organization and made payable to a person.

(2) A check or withdrawal slip shall not be made payable to "cash", "bearer", or a fictitious payee.

(3) The nature of the payment made shall also be noted on the face of the check or withdrawal slip.

(b) The checks for the bingo and raffle account shall be imprinted with the words "Bingo and Raffle Account" and shall contain the licensed authorized organization's bingo and raffle license number on the face of each check.

(c) A licensed authorized organization shall keep and account for all checks and withdrawal slips, including voided checks and withdrawal slips.

History. Acts 2007, No. 388, § 1.

23-114-503. Authorized uses of a bingo and raffle account.

(a) A licensed authorized organization may draw a check on the licensed authorized organization's bingo and raffle account only for:

(1) The payment of necessary and reasonable bona fide bingo-related and raffle-related expenses;

(2) The disbursement of net proceeds derived from the conduct of games of bingo or raffles to charitable purposes; or

(3) The transfer of net proceeds derived from the conduct of games of bingo or raffles to the licensed authorized organization's bingo and raffle savings account pending a disbursement to a charitable purpose.

(b) A licensed authorized organization shall make the disbursement of net proceeds on deposit in the bingo and raffle savings account to a charitable purpose by transferring the intended disbursement back into the licensed authorized organization's bingo and raffle account and then withdrawing an amount by a check drawn on the bingo and raffle account.

History. Acts 2007, No. 388, § 1.

23-114-504. Use of net proceeds for charitable purposes.

(a) A licensed authorized organization shall devote to the charitable purposes of the licensed authorized organization its net proceeds of games of bingo and raffles.

(b) Except as otherwise provided by law, the net proceeds derived from games of bingo and raffles are dedicated to the charitable purposes of the licensed authorized organization only if directed to a cause, need, or activity that is consistent with the federal tax exemption the licensed authorized organization obtained under 26 U.S.C. § 501, as in existence on January 1, 2007, and under which the organization qualifies as a nonprofit organization as defined by law. If the licensed authorized organization is not required to obtain a federal tax exemption under 26 U.S.C. § 501, as in existence on January 1, 2007, the licensed authorized organization's net proceeds are dedicated to the charitable purposes of the licensed authorized organization only if directed to a cause, need, or activity that is consistent with the purposes and objectives for which the licensed authorized organization qualifies as a licensed authorized organization.

(c)(1) The licensed authorized organization shall make mandatory annual or more frequent disbursements from the bingo and raffle account to the general fund of the licensed authorized organization after providing for appropriate reserves and funds necessary to pay for reasonable and necessary bingo and raffle expenses.

(2) Once funds are distributed to the licensed authorized organization general fund under subdivision (c)(1) of this section, no funds shall be returned to the bingo and raffle account except by means of a loan from the licensed authorized organization's general fund to the bingo and raffle account as evidenced by a written instrument.

History. Acts 2007, No. 388, § 1.

23-114-505. Use of proceeds by a licensed authorized organization.

A licensed authorized organization shall not use the net proceeds from games of bingo or raffles directly or indirectly to:

(1) Support or oppose a candidate or slate of candidates for public office;

(2) Support or oppose a measure submitted to a vote of the people; or

(3) Influence or attempt to influence legislation.

History. Acts 2007, No. 388, § 1.

23-114-506. Items of bingo and raffle expense.

(a) Expenses that are reasonable and necessary to lawfully conduct games of bingo or raffles are allowable and include expenses incurred for:

(1) Advertising, including the cost of printing bingo and raffle gift certificates;

(2) Repairs to premises and equipment;

(3) Bingo and raffle supplies and equipment;

(4) Prizes;

(5) Stated rental or mortgage and insurance expenses;

(6) License fees; and

(7) Bookkeeping or accounting services.

(b) No person may be compensated for organizing, promoting, conducting, or otherwise administering a raffle or bingo event. Any such compensation is prohibited under this chapter and is not an allowable expense.

History. Acts 2007, No. 388, § 1.

23-114-507. Expenses paid from bingo and raffle account.

The following items of expenses incurred or paid in connection with the conduct of games of bingo or raffles must be paid from a licensed authorized organization's bingo and raffle account if the licensed authorized organization is required under § 23-114-501 to maintain such an account:

(1) Advertising, including the cost of printing bingo and raffle gift certificates;

(2) Repairs to premises and equipment;

(3) Bingo and raffle supplies and equipment;

(4) Prizes;
(5) Stated rental or mortgage and insurance expenses;
(6) Bookkeeping or accounting services; and
(7) License fees.

History. Acts 2007, No. 388, § 1.

Subchapter 6 — Excise Tax

SECTION.
23-114-601. Tax levied.
23-114-602. Payment and reporting of tax.
23-114-603. Information to be reported.
23-114-604. [Repealed.]
SECTION.
23-114-605. Collection and disbursement of excise tax and license fees.
23-114-606. Nonfiler tax assessments.

23-114-601. Tax levied.

(a) There is levied an excise tax of three-tenths of one cent (0.3¢) upon the sale of each bingo face sold by a licensed distributor to a licensed authorized organization in this state.

(b) Items taxed under subsection (a) of this section shall be exempt from the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10.

A.C.R.C. Notes. As amended by Acts 2009, No. 499, § 10, subsection (a) reads as follows: "There is levied an excise tax of three tenths of one cent (.003¢) upon the sale of each bingo face sold by a licensed distributor organization in this state." The occurrence of "(.003¢)" instead of "(0.3¢)" following "three-tenths of one cent" appears to be result of a typographical error.

Amendments. The 2009 amendment, in (a), deleted (a)(2), redesignated the remaining subdivision accordingly, and substituted "three-tenths of one cent (0.3¢)" for "one cent (1¢)."

23-114-602. Payment and reporting of tax.

(a) The excise tax levied under this subchapter is due and payable by distributors that sold bingo faces to licensed authorized organizations in this state. The tax shall be reported and paid to the Department of Finance and Administration monthly on or before the fifteenth day of the month following the month of sale.

(b) The report shall be filed under oath on forms prescribed by the Director of the Department of Finance and Administration.

(c) The director shall adopt any rules necessary for the proper reporting and payment of the tax.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10.

Amendments. The 2009 amendment deleted "and other bingo equipment" following "bingo faces" in (a).

23-114-603. Information to be reported.

(a) The excise tax report required under § 23-114-602 shall include the following information:

(1) The total number of bingo faces sold to all licensed authorized organizations in this state; and

(2) Any other information that the Director of the Department of Finance and Administration determines is necessary to properly administer the excise tax levied by this subchapter.

(b) A taxpayer shall maintain records to substantiate the contents of each report.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10.

Amendments. The 2009 amendment deleted "and the gross receipts derived from the sale of other bingo equipment" following "bingo faces" in (a)(1).

23-114-604. [Repealed.]

Publisher's Notes. This section, concerning record of prize winners, was repealed by Acts 2009, No. 499, § 10. The section was derived from Acts 2007, No. 388, § 1.

23-114-605. Collection and disbursement of excise tax and license fees.

The Department of Finance and Administration shall deposit the revenue collected from the license fees levied under §§ 23-114-302 and 23-114-307, and the excise tax levied in § 23-114-601 to the credit of the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 2007, No. 388, § 1.

23-114-606. Nonfiler tax assessments.

(a) If a distributor fails to file an excise tax report required under this chapter, the Department of Finance and Administration shall make an excise tax assessment for the period or periods for which the distributor failed to report.

(b) The estimate shall be based on any information covering any period possessed by the department.

(c) On the basis of the department's estimate, the department shall compute and determine the amount of excise tax required to be paid along with any applicable interest and penalties authorized under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 2007, No. 388, § 1.

Subchapter 7 — Enforcement

SECTION.
23-114-701. Revocation of license — Licensed authorized organization.
23-114-702. Revocation of license — Distributors and manufacturers.
23-114-703. Inspection of premises.
23-114-704. Injunction.
23-114-705. Examination of records.
23-114-706. Complaints.

23-114-701. Revocation of license — Licensed authorized organization.

The license issued to an authorized organization is subject to revocation under this chapter if the organization:

(1) Makes a false statement or material omission in an application for a license under this chapter;

(2) Fails to maintain records that fully and accurately record each transaction connected with:

(A) Conducting raffles or games of bingo; and

(B) Leasing of premises to be used for raffles or games of bingo;

(3) Falsifies or makes a false entry in a book or record if the entry relates in any way to the promotion, operation, or administration of raffles or games of bingo;

(4) Diverts or pays a portion of the proceeds from a raffle or a game of bingo to a person except in furtherance of one (1) or more of the lawful purposes set forth in this chapter; or

(5) Violates this chapter or a term of a license issued under this chapter in any other way.

History. Acts 2007, No. 388, § 1.

23-114-702. Revocation of license — Distributors and manufacturers.

The license issued to a distributor or manufacturer is subject to revocation under this chapter if the licensee:

(1) Makes a false statement or material omission in an application for a license under this chapter;

(2) Fails to maintain records that fully and accurately record all transactions connected with the distribution of bingo equipment;

(3) Falsifies or makes a false entry in a book or record if the entry relates in any way to the distribution of bingo equipment; or

(4) Violates this chapter or a term of a license issued under this chapter in any other way.

History. Acts 2007, No. 388, § 1.

23-114-703. Inspection of premises.

The Department of Finance and Administration may enter and inspect the premises where:

(1) A raffle or a game of bingo is being conducted or intended to be conducted; or

(2) Equipment used or intended for use in a raffle or a game of bingo is located.

History. Acts 2007, No. 388, § 1.

23-114-704. Injunction.

(a) If the Department of Finance and Administration has reason to believe that this chapter has been violated, the Director of the Department of Finance and Administration may petition a court for injunctive relief to restrain the violation.

(b)(1) Venue for an action seeking injunctive relief against a licensed distributor or a licensed manufacturer is in Pulaski County, Arkansas.

(2) Venue for an action seeking injunctive relief against a licensed authorized organization is in the county where the licensed authorized organization resides.

(c) If the court finds that this chapter has been violated, the court shall restrain the violation by issuing:

(1) A temporary restraining order;

(2) After due notice and hearing, a temporary injunction; and

(3) After a final trial, a permanent injunction.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 19; 2009, No. 499, § 11.

Amendments. The 2009 amendment by No. 164, in (c), subdivided the text, substituted "restrain the violation by issuing" for "issue" in the introductory paragraph, deleted "to restrain the violation" at the end of (c)(3), and made related changes.

The 2009 amendment by No. 499 deleted "or is about to be" preceding "violated" in (a); and in (b), inserted (b)(2), redesignated the remaining text accordingly, and inserted "against a licensed distributor or a licensed manufacturer" in (b)(1).

23-114-705. Examination of records.

To verify compliance with this chapter, the Department of Finance and Administration may audit and examine the books, papers, records, equipment, and place of business of a:

(1) Licensed authorized organization;

(2) Distributor licensed under this chapter; or

(3) Manufacturer licensed under this chapter.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 20.

Amendments. The 2009 amendment redesignated the section, and made related and stylistic changes.

23-114-706. Complaints.

If a person suspects a violation of this chapter, he or she may file a complaint concerning a licensed authorized organization with the Department of Finance and Administration.

History. Acts 2009, No. 499, § 12.

CHAPTER 115

ARKANSAS SCHOLARSHIP LOTTERY ACT

SUBCHAPTER.

1. General Provisions.
2. Arkansas Lottery Commission.
3. Employees Of Arkansas Lottery Commission.
4. Operation Of Lottery.
5. Vendors.
6. Retailers.
7. Procurements.
8. Lottery Proceeds.
9. Penalties.
10. Debtors Owing Money to the State.
11. Arkansas Lottery Commission Legislative Oversight Committee.

Effective Dates. Identical Acts 2009, Nos. 605 and 606, § 27: Mar. 25, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that lotteries will provide funding for scholarships to the citizens of this state; that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act; and that the state lotteries should be implemented as soon as possible to effectuate the will of the citizens of this state and implement lottery-funded scholarships as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Subchapter 1 — General Provisions

SECTION.

23-115-101. Short title.
23-115-102. Legislative intent.
23-115-103. Definitions.
23-115-104. Fiscal impact statement.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkan-

sas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 20, § 5: Feb. 9, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Public Employees' Retirement System currently requires that retirement contributions be based on a member's base salary plus any multipliers; that retirement contributions and benefits should be determined based on a member's base salary and not any multipliers or special salary allowances; and that this act is immediately necessary to clarify the meaning of the term 'compensation' for purposes of the Arkansas Public Employees' Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1180, § 4: Apr. 4, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans who obtain postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1,

2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Identical Acts 2014 (2nd Ex. Sess.), Nos. 4 and 8, § 3: July 3, 2014. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the expansion of the lottery to include multidraw screen-based lottery games goes beyond the intent of the constitutional amendment; that voters did not anticipate such multidraw screen-based lottery games to be used as a part of the scholarship lottery program; and that this act is immediately necessary to prohibit the implementation of multidraw screen-based lottery games and to ensure the integrity of the lottery as envisioned by Arkansas citizens. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-101. Short title.

This chapter shall be known and may be cited as the "Arkansas Scholarship Lottery Act".

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-102. Legislative intent.

It is found and declared by the General Assembly that:

(1) Net proceeds of lotteries conducted under this chapter shall be used to:

(A) Fund and provide for scholarships and grants to citizens of the State of Arkansas enrolled in public and private nonprofit two-year and four-year colleges and universities located within the state; and

(B) Supplement, not supplant, nonlottery educational resources;

(2) Lotteries shall be operated and managed in a manner that:

(A) Provides continuing entertainment to the public;

(B) Maximizes revenues; and

(C) Ensures that the lotteries are operated with integrity, dignity, and adequate internal controls and free of political influence; and

(3) The Arkansas Lottery Commission shall be accountable to the General Assembly and to the public through a system of audits and reports.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-103. Definitions.

As used in this chapter:

(1) "Administrative expenses" means operating expenses, excluding amounts set aside for prizes, regardless of whether the prizes are claimed, and excluding amounts held as a fidelity fund under § 23-115-603;

(2) "Administrative order" means the final disposition of the Arkansas Lottery Commission in any matter other than a claim in contract or in tort, including without limitation licensing, in which the Arkansas Lottery Commission is required by law to make its determination after notice and a hearing;

(3)(A) "Casino gambling" means a location or business for the purposes of conducting illegal gambling activities, including without limitation activities under § 5-66-101 et seq. that are not authorized under this chapter.

(B) "Casino gambling" does not include the sale and purchase of tickets or shares;

(4)(A) "Compensation" means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

(B) "Compensation" includes without limitation a payment made under obligation for services or other value received.

(C) Subdivisions (4)(A) and (B) of this section do not apply to "compensation" as used in § 23-115-304;

(5) "Female-owned business" means a business:

(A) Whose management and daily business operations are under the control of one (1) or more females; and

(B) Either:

(i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business;

(ii) Which is a partnership in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(6) "Fiscal impact statement" means a realistic written statement of the:

(A) Purpose of a proposed law or proposed amendment to a law under this chapter; and

(B) Estimated financial cost to the Arkansas Lottery Commission, the lottery, and this state of implementing or complying with the proposed law or proposed rule;

(7) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor;

(8) "Immediate family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, stepchild, grandmother-in-law, grandfather-in-law, stepgrandchild, or any individual acting as parent or guardian;

(9) "Incompetence" means:

(A) Gross ignorance of official duties;

(B) Gross carelessness in the discharge of official duties; or

(C) Inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the person's appointment;

(10) "License" means authorization granted by the Arkansas Lottery Commission to an individual to operate as a retailer, including without limitation the execution of a contract between the Arkansas Lottery Commission and the individual relating to obligations and terms for operating as a retailer;

(11) "Lobbying" means communicating directly or soliciting others to communicate with any member of the Arkansas Lottery Commission, the Director of the Arkansas Lottery Commission, any employee of the Arkansas Lottery Commission, or a member of the Arkansas Lottery Commission Legislative Oversight Committee with the purpose of influencing the actions of the Arkansas Lottery Commission or the Arkansas Lottery Commission Legislative Oversight Committee;

(12) "Local government" means:

(A) A county;

(B) A city of the first class or a city of the second class;

(C) An incorporated town; or

(D) Any other district or political subdivision or any board, commission, or agency of the political subdivisions under subdivisions (12)(A)-(C) of this section;

(13)(A) "Lottery" means a game of chance approved by the Arkansas Lottery Commission and operated under this chapter.

(B) "Lottery" includes without limitation:

(i) An instant ticket;

(ii) A draw game;

(iii) Participation in a multistate or multisovereign game; and

(iv) A raffle.

(C) "Lottery" does not include:

(i) Casino gambling;

(ii) A video lottery;

(iii) Pari-mutuel wagering on horse racing or greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether the pari-mutuel wagering is on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(iv) Wagering on electronic games of skill under the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.; or

(v) Conducting or participating in charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.;

(14) "Lottery proceeds" means all revenue derived from the sale of tickets or shares and all other moneys derived from or in connection with the operation of a lottery, including without limitation fees, offsets, reimbursements, insurance proceeds, damages, and liquidated damages collected or imposed by the Arkansas Lottery Commission under this chapter;

(15)(A) "Major procurement contract" means a contract for a gaming product or service costing more than seventy-five thousand dollars ($75,000), including without limitation:

(i) A major advertising contract;

(ii) An annuity contract;

(iii) A prize payment agreement;

(iv) A consulting service;

(v) Lottery equipment;

(vi) Tickets; and

(vii) Any other product and service unique to lotteries.

(B) "Major procurement contract" does not include a material, supply, equipment, or service common to the ordinary operations of the Arkansas Lottery Commission.

(C) When the cost of a proposed contract for a gaming product or service is to be paid in whole or in part on a contingent basis, the Arkansas Lottery Commission shall estimate the value of the proposed contract to determine whether it is a major procurement contract;

(16) "Member of a minority" means a lawful permanent resident of this state who is:

(A) African American;

(B) Hispanic American;

(C) American Indian;

(D) Asian American; or

(E) Pacific Islander American;

(17) "Minority-owned business" means a business that is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business;

(B) A partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of a minority who report as their personal income for Arkansas income

tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(18) "Multidraw screen-based lottery game" means a lottery game that:

(A) Is played in real time at regular intervals throughout a single day; and

(B) Uses a video screen or monitor to display lottery game information or lottery game results for players;

(19)(A) "Multistate or multisovereign lottery" and "multistate or multisovereign game" mean a lottery or game:

(i) Provided by an association or group of state-operated or sovereign-operated lotteries that is:

(a) Organized for the purpose of government benefit; and

(b) Wholly owned and operated by the member lotteries under a mutual agreement, contract, or compact; and

(ii) Operated pursuant to the terms of the association's or group's rules governing the operation and the payment of prizes of the game.

(B) "Multistate or multisovereign lottery" and "multistate or multisovereign game" do not include a lottery prohibited or excluded under this chapter;

(20) "Net proceeds" means lottery proceeds less:

(A) Operating expenses;

(B) The amount of fidelity fund revenue under § 23-115-603 that exceeds five hundred thousand dollars ($500,000);

(C) The undepreciated amount of capital assets; and

(D) Accruals that will not result in a cash outflow;

(21) "Nonlottery state educational resources" means the same as defined in § 6-85-204;

(22) "Operating expenses" means all costs of doing business, including without limitation:

(A) Prizes, commissions, and other compensation paid to retailers;

(B) Contracts for products or services necessary for the operation of the lottery, including without limitation the execution of major procurement contracts;

(C) Advertising and marketing costs;

(D) Personnel costs;

(E) Capital costs or depreciation of property and equipment;

(F) Funds for compulsive gambling education and treatment;

(G) The payment of sums to the Arkansas State Claims Commission for the reconciliation of valid claims against the Arkansas Lottery Commission;

(H) Payments for the cost of a state and federal criminal background check;

(I) Payments to the Department of Higher Education to:

(i) Reimburse the Department of Higher Education for the costs of administering scholarship awards funded with net proceeds; and

(ii) Replenish nonlottery state educational resources expended by the Department of Higher Education on scholarship awards otherwise funded with net proceeds;

(J) Amounts annually transferred to a fidelity fund under § 23-115-603;

(K) Amounts paid to governmental entities for goods or services provided to the Arkansas Lottery Commission, including without limitation services provided by the Division of Legislative Audit, the Department of Human Services, and the Department of Finance and Administration; and

(L) Withholding and payment of income taxes from lottery prizes;

(23) "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity;

(24) "Prize promotion" means an action taken to enhance the play for an individual game by one (1) or more of the following:

(A) Funding player affinity programs to promote play of a particular instant or online game;

(B) Enriching the prize for an instant or online game;

(C) Instituting player incentives for an individual game;

(D) Instituting retailer commission incentives for an individual game; or

(E) Funding supplemental advertising expenses related to enhancing the promotion of an individual game;

(25)(A) "Public official" means:

(i) The Governor;

(ii) The Lieutenant Governor;

(iii) The Secretary of State;

(iv) The Treasurer of State;

(v) The Attorney General;

(vi) The Commissioner of State Lands;

(vii) The Auditor of State; or

(viii) A member of the General Assembly.

(B) "Public official" includes an individual during the time between the date he or she is elected and the date he or she takes office;

(26) "Retailer" means a person who sells tickets or shares on behalf of the Arkansas Lottery Commission under a license;

(27) "Share" means any intangible evidence of participation in a lottery;

(28) "Ticket" means any tangible evidence issued by a lottery to provide participation in a lottery;

(29)(A) "Unclaimed lottery prize money" means a lottery prize expense on the financial books of the Arkansas Lottery Commission that is released from the expense category when a lottery prize is not claimed within the required claim period for the game during a fiscal year.

(B) With respect to a multistate or multisovereign game, "unclaimed lottery prize money":

(i) Includes any unclaimed prize money returned to the Arkansas Lottery Commission from a multistate or multisovereign game; and

(ii) Does not include unclaimed prize money from a multistate or multisovereign game that under the agreement of the states partici-

pating in the multistate or multisovereign game is not returned to the participating states but is applied under the terms of the agreement;

(30)(A) "Vendor" means a person who provides or proposes to provide goods or services to the Arkansas Lottery Commission under a major procurement contract.

(B) "Vendor" does not include:

(i) An employee of the Arkansas Lottery Commission;

(ii) A retailer; or

(iii) A state agency or instrumentality.

(C) "Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract;

(31) "Video lottery" means a lottery game that allows a game to be played using an electronic computer and an interactive computer terminal device:

(A) That is equipped with a video screen and keys and a keyboard or other equipment allowing input by an individual player;

(B) Into which the player inserts coins, currency, vouchers, or tokens as consideration in order for play to be available; and

(C) Through which the player may receive free games, coins, tokens, or credits that may be redeemed for cash, annuitized payments over time, a noncash prize, or nothing, as may be determined wholly or predominantly by chance.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 27; 2010, No. 265, §§ 20-23; 2010, No. 294, §§ 20-23; 2011, No. 20, § 1; 2011, No. 207, § 20; 2011, No. 1173, § 1; 2011, No. 1180, § 2; 2014 (2nd Ex. Sess.), No. 4, § 1; 2014 (2nd Ex. Sess.) No. 8, § 1.

Amendments. The 2009 amendment by No. 1405 deleted former (1); redesignated (2) through (4) as (1) through (3); inserted (4); substituted "Incompetence" for "Incompetency" in the introductory language of (8); substituted "(11)(A)–(C)" for (10)(A)–(C)" in (11); substituted "Arkansas Lottery Commission" for "commission" in (13); inserted "contract for a" in the introductory language of (14)(A); rewrote (14)(C), (15), and (21); and inserted "the Department of Finance and Administration" in (19)(K).

The 2010 amendment by identical acts Nos. 265 and 294 inserted "daughter-in-law, son-in-law" in (7); added (12)(B)(iv); in (13), inserted "or in connection with the operation of," "offsets, reimbursements, insurance proceeds, damages, and liquidated damages," and "or imposed"; inserted "the Department of Human Services" in (19)(K); and added (19)(L).

The 2011 amendment by No. 20 added (4)(C).

The 2011 amendment by No. 207 redesignated former (17) as (17)(A); and added (17)(B) through (17)(D).

The 2011 amendment by No. 1173 added (27).

The 2011 amendment by No. 1180 added (28) through (30).

The 2014 (2nd Ex. Sess.) amendment by identical acts Nos. 4 and 8 added (18).

23-115-104. Fiscal impact statement.

(a) The author of a bill filed in the House of Representatives or the Senate shall have a fiscal impact statement prepared if the bill:

(1) Amends this chapter; or

(2) Will impose a new or increased cost to:

(A) The Arkansas Lottery Commission; or

(B) A lottery.

(b) The author of the bill shall file the fiscal impact statement with the chair of the committee to which the bill is referred:

(1) At least three (3) days before the bill may be called up for final action in the committee during a regular session of the General Assembly;

(2) At least three (3) days before the bill may be called up for final action in the committee during a fiscal session of the General Assembly; and

(3) At least one (1) day before the bill may be called up for final action in the committee during an extraordinary session of the General Assembly.

(c)(1) A fiscal impact statement under this section shall be developed by the Bureau of Legislative Research within the guidelines adopted by the Arkansas Lottery Commission Legislative Oversight Committee.

(2) The Department of Higher Education or the commission, as applicable, shall assist in the preparation of the fiscal impact statement.

(d)(1)(A) If a bill requiring a fiscal impact statement under this section is called up for final passage in the House of Representatives or the Senate and a fiscal impact statement has not been provided by the author of the bill or by the committee to which the bill was referred, any member of the House of Representatives or the Senate may object to the bill's being called up for final passage until a fiscal impact statement is prepared and made available on the desk of each member of the House of Representatives or the Senate at least one (1) day before the bill's being called up for final passage.

(B) An affirmative vote of two-thirds (⅔) of a quorum present and voting shall override the objection.

(2) If an objection is made without override, the presiding officer of the House of Representatives or the Senate shall cause the bill to be referred to the bureau for the preparation of a fiscal impact statement that shall be filed with the presiding officer of the House of Representatives or the Senate not later than five (5) days from the date of the request.

History. Acts 2011, No. 1173, § 2.

Subchapter 2 — Arkansas Lottery Commission

SECTION.
23-115-201. Arkansas Lottery Commission — Creation — Venue.
23-115-202. Members — Duties.
23-115-203. Qualifications of commission members.
23-115-204. Lottery Retailer Advisory Board.
23-115-205. Commission powers.
23-115-206. Internal controls — Annual audit.
23-115-207. Rulemaking.
23-115-208. Sovereign immunity.
23-115-209. Appealing administrative orders of the commission.
23-115-210. Removal of commission member.

SECTION.
23-115-211. Certain sections inapplicable.
SECTION.
23-115-212. Duties and responsibilities of internal auditor.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-201. Arkansas Lottery Commission — Creation — Venue.

(a) There is created the Arkansas Lottery Commission to establish and oversee the operation of one (1) or more lotteries under this chapter.

(b) The commission is a self-supporting and revenue-raising agency of the state.

(c) The commission shall reimburse other governmental entities that provide goods or services to the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-202. Members — Duties.

(a)(1) The Arkansas Lottery Commission consists of the following members:

(A) Three (3) members appointed by the Governor;

(B) Three (3) members appointed by the Speaker of the House of Representatives; and

(C) Three (3) members appointed by the President Pro Tempore of the Senate.

(2) The members of the commission shall elect annually:

(A) A chair; and

(B) Other officers necessary to carry on its business.

(b)(1) Of the initial appointees to the commission by the Governor:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(2) Of the initial appointees to the commission by the President Pro Tempore of the Senate:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(3) Of the initial appointees to the commission by the Speaker of the House of Representatives:

(A) One (1) member shall serve a term of two (2) years;

(B) One (1) member shall serve a term of four (4) years; and

(C) One (1) member shall serve a term of six (6) years.

(4) All succeeding appointments to the commission shall be for terms of six (6) years.

(5) The appointing authorities shall determine the length of terms of the initial members of the commission.

(6) A member of the commission shall not serve more than two (2) terms.

(c) A vacancy on the commission shall be filled by the appointing authority for the unexpired portion of the term in which it occurs.

(d)(1) The commission shall meet at least quarterly upon the call of the chair.

(2) A majority of the total membership of the commission constitutes a quorum.

(e) The following shall not be appointed as a member of the commission:

(1) A member of the General Assembly; or

(2) A member of the immediate family of a member of the General Assembly.

(f) Members of the commission may receive expense reimbursement under § 25-16-901 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

A.C.R.C. Notes. Acts 2009, Nos. 605 and 606, § 25, provided:

"(a) Initial appointments to the Arkansas Lottery Commission under § 23-115-

202 shall be made within thirty (30) days of the effective date of this act.

"(b) The Arkansas Lottery Commission shall hold its first meeting within forty-five (45) days of the effective date of this act."

23-115-203. Qualifications of commission members.

(a)(1) In making appointments to the Arkansas Lottery Commission, the appointing authorities under § 23-115-202 shall consider racial, gender, and geographical diversity among the membership as well as legal, financial, or marketing experience.

(2) Individuals appointed to the commission shall be residents of the State of Arkansas.

(b)(1) An individual considered for appointment to the commission shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the appointing authority all releasable information obtained concerning the applicant.

(c) An individual shall not be appointed as a commission member if the individual has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(d) Each member of the commission, before entering upon the discharge of the duties of a commissioner, shall file with the Secretary of State the constitutional oath of office.

(e) Upon the end of his or her term, a former member of the commission shall not:

(1) Represent a vendor or retailer before the commission for a period of two (2) years after the end of the former member's term; or

(2) Engage in lobbying on any matter related to the operation or conduct of lotteries under this chapter for a period of two (2) years after the end of the former member's term.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-204. Lottery Retailer Advisory Board.

(a)(1) The Chair of the Arkansas Lottery Commission, subject to the approval of a majority of a quorum of the Arkansas Lottery Commission, shall appoint a Lottery Retailer Advisory Board to be composed of ten (10) retailers.

(2) In making appointments to the board, the chair may consider a broad spectrum of geographical, racial, gender, and business characteristics of retailers.

(3) The board shall advise the commission on retail aspects of lotteries and present the concerns of retailers throughout the state.

(b)(1) Except as provided in subdivision (b)(2) of this section, each member appointed to the board shall serve a term of two (2) years.

(2)(A) Five (5) of the initial appointees shall serve initial terms of one (1) year.

(B) The initial appointees shall draw lots to determine which five (5) members shall serve a one-year term.

(3) A member of the board shall not serve more than six (6) terms.

(c)(1) The board shall provide by rule for its operating procedures.

(2) Members shall serve without compensation or reimbursement of expenses.

(3) The board may report to the commission and the Arkansas Lottery Commission Legislative Oversight Committee in writing at any time.

(4) The commission may invite the board to make an oral presentation to the commission at any meeting of the commission.

(d) The following shall not be appointed as a member of the board:

(1) A member of the immediate family of a member of the commission;

(2) A member of the immediate family of the director of the commission; or

(3) A member of the immediate family of an employee of the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-205. Commission powers.

(a) The Arkansas Lottery Commission has all powers necessary or convenient to its usefulness in carrying out this chapter that are not in conflict with the Arkansas Constitution or the United States Constitution, including without limitation the following powers:

(1) To adopt and alter a seal;

(2) To adopt, amend, and repeal rules for the regulation of its affairs and the conduct of its business, to prescribe the duties of officers and employees of the commission, and to perform other matters as the commission determines;

(3) To bring suits to enforce demands of the state under this chapter;

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and to enforce the commission's rights with respect to those copyrights, trademarks, and service marks;

(6) To initiate, supervise, and administer the operation of lotteries in accordance with this chapter and rules adopted under this chapter;

(7) To enter into written agreements with one (1) or more other states or sovereigns for the operation, participation in marketing, and promotion of multistate or multisovereign games;

(8) To conduct market research as necessary or appropriate;

(9) To acquire or lease real property and make improvements to the real property and acquire by lease or by purchase personal property, including without limitation:

(A) Computers;

(B) Mechanical, electronic, and online equipment and terminals;

(C) Intangible property, including without limitation computer programs, computer systems, and computer software; and

(D) Broadcast equipment;

(10) To administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the commission;

(11) To employ:

(A) The Director of the Arkansas Lottery Commission; and

(B) An internal auditor to perform the duties and responsibilities required under § 23-115-212;

(12) To select and contract with vendors;

(13) To select and license retailers;

(14) To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;

(15) To conduct background investigations and, if considered necessary by the commission, credit investigations on each potential vendor and retailer;

(16) To supervise ticket or share validation and lottery drawings;

(17) To inspect at times determined solely by the commission the facilities of a vendor or a retailer to determine:

(A) The integrity of the vendor's product or the operations of the retailer; and

(B) Whether the vendor or the retailer is in compliance with its contract or license;

(18) To report any suspected violation of this chapter to the appropriate prosecuting attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation;

(19) Upon request, to provide assistance to the Chief Fiscal Officer of the State, the Legislative Auditor, the appropriate prosecuting attorney, the Attorney General, or a law enforcement agency investigating a violation of this chapter;

(20) To enter into contracts of terms and conditions that the commission determines;

(21) To establish and maintain banking relationships associated with the maintenance and investment of lottery proceeds, including without limitation the establishment of checking and savings accounts and trust funds;

(22)(A) To advertise and promote lotteries and scholarships and grants funded by net proceeds.

(B) The commission shall seek the advice of the Department of Higher Education when advertising to promote scholarships and grants funded by net proceeds;

(23) To approve, disapprove, amend, or modify the budget recommended by the director for the operation of the commission;

(24) To act as a retailer and to establish and operate a sales facility to conduct promotions that involve the sale of tickets or shares and any related merchandise;

(25)(A) To contract with one (1) or more independent testing laboratories to scientifically test and technically evaluate lottery games, lottery terminals, and lottery operating systems.

(B) An independent testing laboratory shall:

(i) Have a national reputation that is demonstrably competent; and

(ii) Be qualified to scientifically test and evaluate all components of a lottery game, lottery terminal, or lottery operating system.

(C) An independent testing laboratory shall not be owned or controlled by a vendor or a retailer;

(26) To withhold state and federal income taxes as required by law; and

(27) To adopt and amend rules necessary to carry out and implement its powers and duties, organize and operate the commission, regulate the conduct of lotteries in general, and any other matters necessary or desirable for the efficient and effective operation of lotteries for the convenience of the public.

(b) The powers enumerated in subsection (a) of this section:

(1) Are in addition to those powers of the commission enumerated elsewhere in this chapter; and

(2) Do not limit or restrict any other powers of the commission.

(c) The commission may delegate to one (1) or more of its members, to the director, or to any agent or employee of the commission powers and duties as it deems proper.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 28; 2010, No. 265, § 24; 2010, No. 294, § 24; 2011, No. 207, § 21.

Amendments. The 2009 amendment rewrote (a)(11)(B).

The 2010 amendment by identical acts Nos. 265 and 294 inserted present (26) and redesignated former (26) as (27).

The 2011 amendment rewrote (a)(11)(B).

23-115-206. Internal controls — Annual audit.

(a) To ensure the financial integrity of lotteries, the Arkansas Lottery Commission shall:

(1) Establish and maintain effective internal controls over financial reporting, including the monitoring of ongoing activities, and comply with the Arkansas Constitution and applicable laws, rules, contracts, agreements, and grants;

(2)(A) Establish and maintain effective internal controls to prevent and detect fraud, including without limitation a system of internal audits.

(B) The commission shall:

(i) By July 1, 2011, approve a formal, written three-year audit plan; and

(ii) Annually review the audit plan.

(C) The commission or a subcommittee of the commission shall review and take action to approve or reject a recommendation from the internal auditor to amend the audit plan;

(3) Include in any contract or license with a vendor or retailer for data processing services or other computer services a provision permitting the Division of Legislative Audit to have access and authority to audit the computer systems of the vendor or retailer;

(4) Notify the division of all known fraud or suspected fraud or all known or suspected illegal acts involving management or other employees of the commission or others with whom the commission contracts;

(5) Inform the division and the Chief Fiscal Officer of the State of any known material violations of the Arkansas Constitution, applicable statutes, rules, contracts, agreements, or grants;

(6) Prepare the financial statements, including the related notes to the financial statements, of the commission in accordance with generally accepted accounting principles and in accordance with guidelines and timelines established by the Chief Fiscal Officer of the State to permit incorporation into the state's financial statements and to permit the audit of the state's financial statements and the commission's financial statements in a timely manner;

(7) Make all financial records and related information available to the division, including the identification of significant vendor relationships in which the vendor has the responsibility for program compliance, in accordance with §§ 10-4-416 and 10-4-424;

(8)(A) Submit monthly reports to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee disclosing the following budgeted and actual information for the reporting period and cumulatively for the fiscal year:

(i) Total lottery revenues;

(ii) Prize disbursements;

(iii) Operating expenses;

(iv) Net assets; and

(v) Administrative expenses.

(B) The commission shall submit a comprehensive annual financial report to the Governor and to the Arkansas Lottery Commission Legislative Oversight Committee by placing the report on the commission's website and providing notice of its availability to the Governor and to the Arkansas Lottery Commission Legislative Oversight Committee.

(C)(i) The comprehensive annual financial report shall comply with Governmental Accounting Standards Board Statement 34 and follow the guidelines of the Certificate of Achievement for Excellence in Financial Reporting Program of the Government Finance Officers Association.

(ii) The Arkansas Lottery Commission Legislative Oversight Committee shall identify the statistical data required for compliance with this subdivision (a)(8)(C).

(D) The comprehensive annual financial report shall include without limitation:

(i) Information concerning the commissioners of the Arkansas Lottery Commission;

(ii) A current organizational chart;

(iii) Information on each type of lottery game offered by the Arkansas Scholarship Lottery, game promotions, or other activities related to games during the fiscal year;

(iv) The annual financial audit report made to the Legislative Joint Auditing Committee;

(v) A statement of revenue, expenses, and changes in net assets for each fiscal year since inception of the Arkansas Scholarship Lottery;

(vi) Separate reports from each component or department of the commission or Arkansas Scholarship Lottery, including without limitation sales, marketing, retailers, gaming operations, players, and security;

(vii) A fiscal year-end report on any information required to be reported by the commission on a monthly basis, including without limitation:

(a) Unclaimed lottery prize money under § 23-115-403;

(b) The Scholarship Shortfall Reserve Trust Account under § 23-115-802; and

(c) Minority-owned businesses and female-owned business participation under § 23-115-401;

(viii) Information concerning the Arkansas Scholarship Lottery's industry standings or rankings;

(ix) Information concerning the scholarships awarded from net lottery proceeds, including without limitation:

(a) Demographic reports from the Department of Higher Education for each full semester during the fiscal year on accessibility to scholarships, award amounts for each approved institution of higher education; and

(b) The department's report to the Arkansas Lottery Commission Legislative Oversight Committee required under § 6-85-219(b);

(x) A report from the Lottery Retailer Advisory Board, if a report was received during the fiscal year;

(xi) Where to find information on gambling disorder treatment and education programs;

(xii) Where to find website information on rules, gaming, and frequently asked questions; and

(xiii) Contact information for the Arkansas Scholarship Lottery and key employees of the commission;

(9) Maintain weekly or more frequent records of lottery transactions, including without limitation:

(A) The distribution of tickets or shares to retailers;

(B) Revenues received;

(C) Claims for lottery prizes;

(D) Lottery prizes paid;

(E) Lottery prizes forfeited; and

(F) Other financial transactions of the commission;

(10)(A) Submit to the cochairs of the Arkansas Lottery Commission Legislative Oversight Committee by April 30 of each year the estimated annual operating budget for the commission for the next fiscal year.

(B) At a minimum, the estimated annual operating budget submitted for the Arkansas Lottery Commission Legislative Oversight Committee's review shall:

(i) Contain an estimate of the net proceeds to be available for scholarships and grants during the succeeding fiscal year;

(ii) Compare the:

(a) Actual revenues and expenditures for the last completed fiscal year;

(b) Budgeted revenues and expenditures for the current fiscal year; and

(c) Estimated revenues and expenditures for the next fiscal year;

(iii) Contain an explanation of increases or decreases in revenues and expenditures shown in the estimated annual operating budget for the next fiscal year compared to the budgeted revenues and expenditures for the current fiscal year;

(iv) Classify all revenues and expenditures by specific purpose instead of "miscellaneous" or "other";

(v) Contain a schedule of the total amounts of regular salaries, extra help compensation, overtime compensation, and personal services matching as defined in § 19-4-521; and

(vi) For each position title authorized under §§ 23-115-305 — 23-115-307, contain a schedule of the annual salary, special allowance, or grade and include:

(a) The total number of persons currently employed;

(b) The number of Caucasian male employees;

(c) The number of Caucasian female employees;

(d) The total number of Caucasian employees;

(e) The number of African-American male employees;

(f) The number of African-American female employees;

(g) The number of other employees who are members of racial minorities; and

(h) The total number of minorities currently employed; and

(11) Adopt the same fiscal year as that used by state government.

(b)(1)(A) The division shall annually audit the commission.

(B) The division may conduct an investigation or audit or prepare special reports regarding the commission or related entities, scholarships, grants, vendors, retailers, or any other transactions or relationships connected or associated with the commission or its operations, duties, or functions upon the approval of the Legislative Joint Auditing Committee.

(2) The commission shall reimburse the division at an hourly rate set by the Legislative Joint Auditing Committee for work performed by the division relating to any audit, investigation, or special report regarding the commission and related entities, scholarships, grants, vendors, retailers, or other related matters.

(3)(A) If the commission, the General Assembly, the Arkansas Lottery Commission Legislative Oversight Committee, or the Legislative Joint Auditing Committee requests additional audits or performance reviews of the fiscal affairs or operations of the commission to be conducted by a private certified public accountant or other consultant, the division shall select and contract with appropriate certified public accountants or consultants to provide the services.

(B) The division shall contract for the services which shall be paid directly to the contractor by the commission.

(C) A copy of any report or management correspondence prepared by the certified public accountants or consultants shall be forwarded to the commission, the division, and the Arkansas Lottery Commission Legislative Oversight Committee.

(4) This chapter does not limit the statutory authority of the division or the responsibilities of the commission or related entities, board members, employees, vendors, retailers, or any other individuals or entities to cooperate with the division or provide information or records requested by the division.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 207, §§ 22, 23; 2011, No. 1057, §§ 1, 2.

A.C.R.C. Notes. Pursuant to § 1-2-207, subdivision (a)(10) is set out as amended by Acts 2011, No. 1057, § 2. Acts 2011, No. 207, § 23 amended subdivision (a)(10) to read as follows:

"(10)(A) Submit to the Cochairs of the Arkansas Lottery Commission Legislative Oversight Committee by April 30 of each year the estimated annual operating budget for the commission for the next fiscal year.

"(B) At a minimum, the estimated annual operating budget submitted for the Arkansas Lottery Commission Legislative Oversight Committee's review shall:

"(i) Contain an estimate of the net proceeds to be available for scholarships and grants during the succeeding fiscal year;

"(ii) Compare the:

"(*a*) Actual revenues and expenditures for the last completed fiscal year;

"(*b*) Budgeted revenues and expenditures for the current fiscal year; and

"(*c*) Estimated revenues and expenditures for the next fiscal year;

"(iii) Contain an explanation of increases or decreases in revenues and expenditures shown in the estimated annual operating budget for the next fiscal year compared to the budgeted revenues and expenditures for the current fiscal year;

"(iv) Classify all revenues and expenditures by specific purpose, instead of 'miscellaneous' or 'other';

"(v) Contain a schedule of the total amounts of regular salaries, extra-help compensation, overtime compensation, and personal services matching as defined in § 19-4-521; and

"(vi) For each position title authorized under §§ 23-115-305 - 23-115-307, contain a schedule that includes the:

"(*a*) Annual salary, special allowance, or grade;

"(*b*) Total number of persons currently employed;

"(*c*) Estimated revenues and expenditures for the next fiscal year;

"(*d*) Number of Caucasian female employees;

"(*e*) Total number of Caucasian employees;

"(*f*) Number of black male employees;

"(*g*) Number of black female employees;

"(*h*) Number of other employees who are members of racial minorities; and

"(*i*) Total number of minorities currently employed; and"

Amendments. The 2011 amendment by No. 207 redesignated former (a)(2) as present (a)(2)(A); inserted (a)(2)(B) and (a)(2)(C); substituted "the estimated annual" for "a copy of the annual" in (a)(10)(A); and rewrote (a)(10)(B).

The 2011 amendment by No. 1057 rewrote (a)(8); substituted "the estimated annual operating budget" for "a copy of the annual operating budget" in (a)(10)(A); and rewrote (a)(10)(B).

23-115-207. Rulemaking.

(a) The Arkansas Lottery Commission may adopt rules regulating the conduct of lotteries in general, including without limitation rules specifying:

(1) The types of lotteries to be conducted;

(2)(A) The sale price of tickets or shares and the manner and method of sale.

(B)(i) All sales of tickets or shares are for cash only.

(ii) Payment by checks, credit cards, charge cards, or any form of deferred payment is prohibited;

(3) The number and amount of prizes;

(4) The method and location of selecting or validating winning tickets or shares;

(5) The manner and time of payment of prizes, including without limitation lump-sum payments or installments over a period of years;

(6)(A) The manner of payment of prizes to the holders of winning tickets or shares.

(B) Winners of five hundred dollars ($500) or less may claim prizes from any of the following:

(i) A retailer; or

(ii) The commission.

(C)(i) Winners of more than five hundred dollars ($500) shall claim prizes from the commission.

(ii) The commission may establish claim centers throughout the state as it deems necessary;

(7) The frequency of lotteries and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9)(A) The method to be used in selling tickets or shares.

(B) The selling of tickets or shares may include the use of electronic or mechanical devices.

(C) If the commission elects to use electronic or mechanical devices to sell tickets or shares, the commission shall provide by rule:

(i) Specifications and required features for electronic or mechanical devices that may be used to sell tickets or shares; and

(ii) Procedures and requirements to prevent the use of electronic or mechanical devices by an individual under eighteen (18) years of age.

(D) A retailer who knowingly allows a person under eighteen (18) years of age to purchase a lottery ticket from an electronic or mechanical device is subject to the penalties under § 23-115-901.

(E) The commission shall publish a notice on the commission's public website that provides the location, including without limitation the street address, of each self-service lottery ticket vending machine in operation in this state;

(10) The manner and amount of compensation to retailers; and

(11) Any other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lotteries, the continued entertainment and convenience of the public, and the integrity of the lotteries.

(b) The commission may adopt rules requiring the publication on a ticket or share of the odds of winning a particular lottery game.

(c)(1)(A) Except as provided in subdivision (c)(1)(B) of this section, the promulgation of rules under this chapter shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(B) The commission shall not be required to file rules under § 10-3-309.

(2)(A) The promulgation of rules by the commission shall be exempt from § 10-3-309.

(B) The commission shall file its rules with the Arkansas Lottery Commission Legislative Oversight Committee for review at least thirty (30) days before the expiration of the public comment period.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 1192, § 1.

Amendments. The 2011 amendment inserted (a)(9)(E).

23-115-208. Sovereign immunity.

(a) This chapter does not waive the sovereign immunity of the State of Arkansas.

(b)(1) A claim in contract or in tort against the Arkansas Lottery Commission or its employees shall be presented to the Arkansas Lottery Commission.

(2) The Arkansas Lottery Commission shall promulgate rules concerning the consideration of claims in contract or in tort presented to the Arkansas Lottery Commission, including without limitation rules concerning the conduct of hearings on claims in contract or in tort.

(c)(1) A claimant may appeal the decision of the Arkansas Lottery Commission under subsection (b) of this section to the Arkansas State Claims Commission.

(2) The claimant may:

(A) Within forty (40) days after the decision is rendered, file with the Arkansas State Claims Commission a notice of appeal of the decision of the Arkansas Lottery Commission;

(B) Within forty (40) days after the decision is rendered, file with the Arkansas Lottery Commission a motion for reconsideration requesting the Arkansas Lottery Commission to reconsider its decision; and

(C) Within twenty (20) days after the Arkansas Lottery Commission's reconsideration or denial of the motion for reconsideration, file with the Arkansas State Claims Commission a notice of appeal of the decision of the Arkansas Lottery Commission.

(3) When the Arkansas Lottery Commission notifies parties of a decision of the Arkansas Lottery Commission, it shall advise the parties of the right of appeal.

(d)(1)(A) Except as provided in subdivisions (d)(2)-(4) of this section, appeals of claims in contract or in tort against the Arkansas Lottery Commission or its employees shall be conducted by the Arkansas State Claims Commission in the same manner as a claim under § 19-10-201 et seq.

(B) The Arkansas State Claims Commission shall consider an appeal de novo.

(2) A decision of the Arkansas State Claims Commission relating to a claim in contract or in tort against the Arkansas Lottery Commission or its employees shall not be appealed to the General Assembly.

(3)(A) A valid claim in any amount against the Arkansas Lottery Commission shall not be referred to the General Assembly for an appropriation.

(B) The Clerk of the Arkansas State Claims Commission shall notify the Arkansas Lottery Commission of the amount of the valid claim.

(C) Upon receipt of notification from the clerk, the Arkansas Lottery Commission shall deliver a check to the clerk, who shall deposit the sum as a nonrevenue receipt into the Miscellaneous Revolving Fund from which he or she shall disburse the amount of the claim to the claimant.

(4) Written reports under § 19-10-212 shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

RESEARCH REFERENCES

ALR. State Lotteries: Actions by Ticketholders or Other Claimants against State or Contractor for State. 48 A.L.R.6th 243.

CASE NOTES

Immunity.

Because a judgment for the marketer would operate to control the action of the state or subject it to liability, the suit was one against the state and was barred by the doctrine of sovereign immunity. Ark. Lottery Comm'n v. Alpha Mktg., 2013 Ark. 232, — S.W.3d — (2013).

23-115-209. Appealing administrative orders of the commission.

(a) A retailer, a vendor, or an applicant for a contract or a retailer license aggrieved by an administrative order of the Arkansas Lottery Commission may appeal that decision to Pulaski County Circuit Court.

(b) The court shall hear appeals from administrative orders of the commission, and based upon the record of the proceedings before the commission, may reverse the administrative order of the commission only if the person appealing the administrative order proves the administrative order to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

(4) A result of substantial misconduct by the commission; or

(5) Contrary to the United States Constitution, the Arkansas Constitution, or this chapter.

(c) The circuit court may remand an appeal to the commission to conduct further hearings.

(d)(1) A person who appeals the award of a contract, including without limitation a major procurement contract, is liable for all costs of appeal and defense if the appeal is denied or the contract award upheld.

(2) If upon the motion of the commission the court finds the appeal to have been frivolous, the cost of appeal and defense shall include without limitation the following expenses of the commission resulting from institution of the appeal:

(A) Court costs;

(B) Bond;

(C) Legal fees; and

(D) Loss of income.

(3) A person appealing the award of a contract may be entitled to the reasonable costs incurred in connection with the contract solicitation, including without limitation bid preparation costs.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, §§ 29, 30.

Amendments. The 2009 amendment deleted "major procurement" preceding "contract" in (a); and added (d)(3).

23-115-210. Removal of commission member.

(a)(1) A member of the Arkansas Lottery Commission may be removed by the appointing authority for:

(A) Misconduct;

(B) Incompetence; or

(C) Any malfeasance in office.

(2) The appointing authority shall appoint a qualified individual to replace the removed member of the commission to serve the remainder of his or her term.

(b) An order of removal of a commission member by the appointing authority shall:

(1) Be in writing;

(2) Be delivered to the removed commission member or counsel for the removed commission member; and

(3) Specifically set out the grounds relied upon for removal.

(c)(1) A removed commission member may institute proceedings for review by filing a petition in Pulaski County Circuit Court within thirty (30) days after delivery to him or her or his or her attorney of the appointing authority's order of removal.

(2) This petition shall not supersede or stay the order of removal, nor shall any court enter an order to this effect or one that would impair the authority of the appointing authority to appoint a commission member whose service begins immediately upon fulfillment of the normal requirements for assuming office.

(d)(1) When the matter is heard by the circuit court, it shall be tried de novo without a jury.

(2) The appointing authority shall have the burden of proof to show by clear and convincing evidence that cause under subdivision (a)(1) of this section existed for removal of the commission member.

(3)(A) If the circuit court determines that cause has been shown, it shall enter an order removing the commission member in question from office.

(B) If the circuit court determines that cause under subdivision (a)(1) of this section has not been shown by clear and convincing evidence, the circuit court shall order the removed commission member reinstated to his or her position and upon request shall award a reasonable attorney's fee and court costs to the reinstated party.

(e)(1) Subject to the restrictions of subsection (c) of this section on supersedeas or stay orders, a removed commission member may appeal the decision of the circuit court to the Supreme Court.

(2) The appointing authority may appeal the decision of the circuit court to the Supreme Court, but the appeal shall not preclude the circuit court, in its discretion, from entering an order reinstating the removed member.

(f) A commission action in which the appointed replacement commission member participates is not void, voidable, or in any way subject to

invalidation on grounds of participation of the appointed replacement commission member or lack of participation by the removed commission member if the circuit court or the Supreme Court orders the removed commission member reinstated.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-211. Certain sections inapplicable.

In addition to any provision of law expressly exempting the Arkansas Lottery Commission, the following sections shall not apply to the commission:

(1) Section 19-1-211;
(2) Section 19-1-301 et seq.;
(3) Section 19-1-609;
(4) Section 19-4-1802;
(5) Section 19-5-206;
(6) Section 19-11-301 et seq.;
(7) Section 22-9-103;
(8) Section 22-9-104;
(9) Section 25-1-104; and
(10) Section 25-27-104.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 31; 2010, No. 265, § 25; 2010, No. 294, § 25.

Amendments. The 2009 amendment inserted "to" in the introductory language; added (7) through (11); and made related changes.

The 2010 amendment by identical acts Nos. 265 and 294, in the introductory language, added "In addition to any provision of law expressly exempting the Arkansas Lottery Commission" and substituted "commission" for "Arkansas Lottery Commission"; and deleted former (10) and redesignated former (11) as present (10).

23-115-212. Duties and responsibilities of internal auditor.

(a) The internal auditor employed by the Arkansas Lottery Commission shall report directly to the commission.

(b) The commission shall determine the duties and responsibilities of the internal auditor that:

(1) Assist the commission in the commission's obligations under § 23-115-206; and

(2) Are consistent with the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors, including without limitation:

(A) Preparing a formal written three-year audit plan and presenting it to the commission for commission approval;

(B) Conducting ongoing reviews of the internal procedures, records, and operating procedures of the commission and the lotteries to:

(i) Verify compliance with established policies, procedures, and control systems;

(ii) Assure compliance with regulatory and statutory conditions; and

(iii) Assure adherence to generally accepted accounting principles; and

(C) Advising the commission of inconsistencies within or improvements needed to the internal controls, operating procedures, or accounting procedures of the commission or the lotteries.

(c)(1) The internal auditor shall report to the Arkansas Lottery Commission Legislative Oversight Committee one (1) time per month to:

(A) Advise the Arkansas Lottery Commission Legislative Oversight Committee concerning current issues and problems reported to the commission under subsection (b) of this section; and

(B) Update the Arkansas Lottery Commission Legislative Oversight Committee concerning the resolution of findings of the Division of Legislative Audit in the annual financial report for the commission.

(2) The internal auditor is not required to file a report, but shall include a statement in the monthly report of the commission if:

(A) There are no current issues or problems reported to the commission; and

(B) The commission and the division agree that all audit findings are resolved.

History. Acts 2011, No. 207, § 24.

Subchapter 3 — Employees Of Arkansas Lottery Commission

SECTION.
23-115-301. Director — Appointment — Duties.
23-115-302. Duties of director.
23-115-303. Employees — Background investigation.
23-115-304. Commission employees — Participation in Arkansas Public Employees' Retirement System.
23-115-305. Regular salaries.
23-115-306. Special salary allowances.
23-115-307. Expansion pool.
23-115-308. Participation in Arkansas Administrative Statewide Information System.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eli-

gible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 20, § 5: Feb. 9, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Public Employees' Retirement System currently requires that retirement contributions be based on a member's base salary plus any multipliers; that retirement contributions and benefits should be determined based on a member's base salary and not any multipliers or special salary allowances; and that this act is immediately necessary to clarify the meaning of the term 'compensation' for purposes of the Arkansas Public Employees' Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1173, § 18: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2013, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-301. Director — Appointment — Duties.

(a)(1)(A) The Arkansas Lottery Commission shall appoint the Director of the Arkansas Lottery Commission.

(B) The director is an employee of the commission and shall direct the day-to-day operations and management of the commission.

(2) The director is vested with powers and duties as specified by the commission and by law.

(3) The director serves at the pleasure of the commission.

(b)(1) An individual considered for appointment as director shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(c) The commission shall not employ as director an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-302. Duties of director.

(a) The Director of the Arkansas Lottery Commission shall direct and supervise all administrative and technical activities related to the operation of a lottery in accordance with this chapter and with rules adopted by the Arkansas Lottery Commission.

(b) The director shall:

(1) Facilitate the initiation and supervise and administer the operation of the lotteries;

(2) Direct personnel as deemed necessary;

(3) Employ and compensate persons and firms as deemed necessary;

(4) Appoint, select, and employ officers, agents, and employees, including professional and administrative staff and personnel and hearing officers, and fix their compensation and pay their expenses as authorized by Arkansas law;

(5) Promote or provide for the promotion of lotteries and any functions related to the operation of a lottery;

(6) Prepare a budget for the approval of the commission;

(7) Require bond from retailers and vendors in amounts as required by the commission;

(8) Report monthly to the commission and the Arkansas Lottery Commission Legislative Oversight Committee a complete statement of lottery revenues and expenses for the preceding month and an accompanying statement of net assets;

(9) Annually by November 15, report to the Arkansas Lottery Commission Legislative Oversight Committee the following:

(A) For the immediately preceding fiscal year:

(i) The total amount of net proceeds from the state lottery; and

(ii) The amounts deposited into and disbursed from the Scholarship Shortfall Reserve Trust Account under § 23-115-802; and

(B) The commission's projection for net proceeds from the state lottery for the current fiscal year; and

(10) Perform other duties generally associated with a director of a commission of an entrepreneurial nature.

(c) The director may for good cause suspend, revoke, or refuse to renew any contract or license entered into in accordance with this chapter and the rules of the commission.

(d) The director or his or her designee may conduct hearings and administer oaths to persons to assure the security and integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 26; 2010, No. 294, § 26; 2011, No. 207, § 25.

Amendments. The 2010 amendment by identical acts Nos. 265 and 294 inserted present (b)(9) and redesignated former (b)(9) as (b)(10).

The 2011 amendment substituted "Annually by November 15" for "By August 15, 2011, and annually thereafter" in the introductory language of (b)(9).

23-115-303. Employees — Background investigation.

(a) As required by Arkansas Constitution, Article 16, § 4, the General Assembly shall fix the salaries of all employees of the Arkansas Lottery Commission, including without limitation the Director of the Arkansas Lottery Commission.

(b) A commission employee shall not have a financial interest in a vendor doing business or proposing to do business with the commission.

(c) A commission employee with decision-making authority shall not participate in a decision involving a retailer with whom the commission employee has a financial interest.

(d)(1) A commission employee who leaves the employment of the commission shall not:

(A) Represent a vendor or retailer before the commission for a period of two (2) years after leaving the employment of the commission; or

(B) Engage in lobbying on any matter related to the operation or conduct of a lottery for a period of two (2) years after leaving the employment of the commission.

(2)(A) Subdivision (d)(1) of this section is supplemental to § 19-11-701 et seq.

(B) If any provision of § 19-11-701 et seq. would impose a restriction on a specific employee greater than the restrictions under subdivision (d)(1) of this section, the provision of § 19-11-701 et seq. shall apply.

(e)(1) Each person considered for employment by the commission shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(f) The commission shall not employ an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(g)(1) The commission shall bond a commission employee with access to commission funds or lottery revenue in an amount as provided by the commission and may bond other commission employees as deemed necessary.

(2) Bonds under subdivision (g)(1) of this section shall be fidelity bonds in excess of the amount provided by the Governmental Bonding Board.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-304. Commission employees — Participation in Arkansas Public Employees' Retirement System.

(a) Employees of the Arkansas Lottery Commission shall be members of the Arkansas Public Employees' Retirement System.

(b)(1) A commission employee's compensation for retirement purposes includes only the base salary of the employee under § 23-115-305.

(2) A commission employee's compensation for retirement purposes does not include a multiplier or other special salary allowance used to increase the employee's salary as authorized by the General Assembly, including without limitation the special salary allowances authorized under § 23-115-306.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 20, § 2; 2011, No. 207, § 26; 2013, No. 1173, § 15.

Amendments. The 2011 amendment by No. 20 rewrote (b)(1); and added (b)(2).

The 2011 amendment by No. 207, in (b), substituted "under §§ 23-115-305 and 23-115-307" for "as authorized by the General Assembly," "a special salary allowance under § 23-115-306" for "any multipliers," and "the employee's salary" for "a person's salary as authorized by the General Assembly."

The 2013 amendment substituted "includes only the base salary of the employee under § 23-115-305" for "shall be the amount determined by the commission under §§ 23-115-305 and 23-115-307 and shall not include a special salary allowance under § 23-115-306 used to increase the employee's salary" in (b)(1).

23-115-305. Regular salaries.

There is established for the Arkansas Lottery Commission the following regular employees, the grades to be assigned to the respective positions, and the maximum annual salaries for each such position. The maximum annual salary for the positions assigned to grades shall be determined in accordance with, but shall not exceed, the maximum annual amount for the grade assigned in this section, as established in § 21-5-209. Except for the purpose of determining the maximum annual salary rate, which is to be applicable to each of the positions to which a salary grade is assigned in this section, in accordance with § 21-5-209, all positions set forth in this section shall be exempt from other provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., but shall not be exempt from the Regular Salaries Procedures and Restrictions Act, § 21-5-101 et seq.

Item Class No. Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate
(01)	LOTTERY CMSN DIRECTOR	1	$141,603
(02)	LOTTERY CMSN INTERNAL AUDITOR	1	$141,603
(03)	LOTTERY CMSN CHIEF OPERATING OFFICER	1	$126,050
(04)	LOTTERY CMSN INFORMATION TECH DIR	1	GRADE N912
(05)	LOTTERY CMSN ADMIN & OPERATIONS DIR	1	GRADE N912

(06)	LOTTERY CMSN CHIEF LEGAL COUNSEL	1	GRADE N910
(07)	LOTTERY CMSN CHIEF FISCAL OFFICER	1	GRADE N910
(08)	LOTTERY CMSM MARKETING & PROD DEV DIR	1	GRADE N909
(09)	LOTTERY CMSN SALES/ RETAIL RELATIONS DIR	1	GRADE N909
(10)	LOTTERY CMSN PROCUREMENT DIRECTOR	1	GRADE N908
(11)	LOTTERY CMSN ADMIN ANALYST	2	GRADE C115
(12)	LOTTERY CMSN ADMIN SUPPORT SUPERVISOR	2	GRADE C113
(13)	LOTTERY CMSN ADMIN SUPPORT SPEC III	6	GRADE C112

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 32.

Amendments. The 2009 amendment by No. 1405 deleted "or its successor" following "et seq." twice in the second sentence; deleted "EXECUTIVE" in the first row of the table; and made minor stylistic changes throughout.

23-115-306. Special salary allowances.

(a) The Arkansas Lottery Commission, upon approval of the Arkansas Lottery Commission Legislative Oversight Committee, may make special salary allowances authorized by this section for recruitment or retention in amounts as the commission may determine equitable in view of the exacting duties that are involved as a part of the salary of the:

(1) Director of the Arkansas Lottery Commission;

(2) Internal auditor of the commission; and

(3) Chief operating officer of the commission.

(b) For a position subject to a special allowance under subsection (a) of this section, the sum of the salary authorized by the General Assembly and the special salary allowance, shall not exceed an amount equal to two and one-half (2½) times the salary for the position authorized by the General Assembly.

(c)(1) The requirement of approval by the Arkansas Lottery Commission Legislative Oversight Committee before granting a special salary allowance under this section is not a severable part of this section.

(2) If the requirement of approval by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, this section is void.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 33; 2010, No. 265, § 27; 2010, No. 294, § 27.

Amendments. The 2009 amendment by No. 1405 inserted "for recruitment or retention" in the introductory language of

(a); deleted "Executive" at the beginning of (a)(1); rewrote (b); added (c); and made a stylistic change.

The 2010 amendment by identical acts Nos. 265 and 294, in (b), deleted "The total compensation" from the beginning, substituted "a special" for "an" preceding "allowance," substituted "the sum of" for "including," and inserted "the" preceding "special salary."

23-115-307. Expansion pool.

(a) The Arkansas Lottery Commission is authorized an expansion pool of sixty (60) positions not to exceed the career service grade C130 and fifteen (15) positions not to exceed the professional and executive grade N922 to be used to establish additional positions of the proper title and salary if the commission does not have sufficient positions available to address growth needs.

(b) A position established under this section shall not exceed a salary rate in excess of the highest rate established by grade or by line item in this subchapter.

(c) A position shall not be authorized from the expansion pool until the specific positions that are requested by the commission are reviewed by the Arkansas Lottery Commission Legislative Oversight Committee.

(d) When seeking review of positions by the Arkansas Lottery Commission Legislative Oversight Committee under this section, the commission shall provide an organizational chart indicating the current structure of the commission and its employees.

(e)(1) The requirement of review by the Arkansas Lottery Commission Legislative Oversight Committee before authorizing positions from the expansion pool is not a severable part of this section.

(2) If the requirement of review by the Arkansas Lottery Commission Legislative Oversight Committee is ruled unconstitutional by a court of competent jurisdiction, this section is void.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 34.

Amendments. The 2009 amendment by No. 1405 substituted "subchapter" or "act" in (b); and substituted "Arkansas Lottery Commission Legislative Oversight Committee" for "committee prior to" in (e)(1) and for "committee" in (e)(2).

23-115-308. Participation in Arkansas Administrative Statewide Information System.

The Arkansas Lottery Commission may participate in the Arkansas Administrative Statewide Information System.

History. Acts 2009, No. 1405, § 55.

Subchapter 4 — Operation Of Lottery

SECTION.
23-115-401. Minority-owned businesses and female-owned businesses.
23-115-402. Restriction on sales.
23-115-403. Attachments, garnishments, or executions withheld from lottery prizes — Validity of tickets or shares

SECTION.
— Lottery prize restrictions — Unclaimed lottery prizes.
23-115-404. Confidential information.
23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements.
23-115-406. Authority of local government.
23-115-407. Video lotteries prohibited.
23-115-408. Video lotteries by institution or facility governed by other wagering laws prohibited.
23-115-409. Laws under other wagering chapters not affected.
23-115-410. Compulsive gambling disorder treatment and educational programs.
23-115-411. Multidraw screen-based lottery game prohibited.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1180, § 4: Apr. 4, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans who obtain postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas

Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Identical Acts 2014 (2nd Ex. Sess.), Nos. 4 and 8, § 3: July 3, 2014. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the expansion of the lottery to include multidraw screen-based lottery games goes beyond the intent of the constitutional amendment; that voters did not anticipate such multidraw screen-based lottery games to be used as a part of the scholarship lottery program; and that this act is immediately necessary to prohibit the implementation of multidraw screen-based lottery games and to ensure the integrity of the lottery as envisioned by Arkansas citizens. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-401. Minority-owned businesses and female-owned businesses.

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission encourage participation by minority-owned businesses and female-owned businesses.

(b) The commission shall adopt a plan that encourages to the greatest extent possible a level of participation by minority-owned businesses and female-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors.

(c) The commission shall provide training programs and other educational activities to encourage minority-owned businesses and female-owned businesses to compete for contracts on an equal basis.

(d) The commission shall employ staff to assist prospective vendors and retailers with entering into and competing for contracts, including without limitation the development and implementation of the plans and programs under subsections (b) and (c) of this section.

(e) The commission shall monitor the results of minority-owned business and female-owned business participation and shall report the results of minority-owned business and female-owned business participation to the Governor and the Arkansas Lottery Commission Legislative Oversight Committee on at least an annual basis.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 35.
Amendments. The 2009 amendment substituted "staff" for "procurement officials" in (d).

23-115-402. Restriction on sales.

(a)(1) Unless authorized to do so in writing by the Director of the Arkansas Lottery Commission, a person shall not sell a ticket or share at a price other than established by the Arkansas Lottery Commission.

(2)(A) Only a retailer holding a valid certificate of authority from the commission shall sell a ticket.

(B) This subsection does not prevent an individual who may lawfully purchase tickets or shares from making a gift of tickets or shares to another individual.

(b) This chapter does not prohibit the commission from designating certain of its agents and employees to sell or give tickets or shares directly to the public.

(c) Subject to prior approval by the commission, retailers may give away tickets or shares as a means of promoting goods or services to customers or prospective customers.

(d) A retailer shall not sell a ticket or share except from the locations evidenced by the retailer's license issued by the commission unless the commission authorizes in writing any temporary location not listed in the retailer's license.

(e)(1) Tickets or shares shall not be sold or given to individuals under eighteen (18) years of age.

(2) An individual under eighteen (18) years of age is not eligible to win a lottery prize.

(f) An individual is not eligible to win a lottery prize while the individual is incarcerated in:

(1) The Department of Correction;

(2) The Department of Community Correction; or

(3) A county or municipal jail or detention facility.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-403. Attachments, garnishments, or executions withheld from lottery prizes — Validity of tickets or shares — Lottery prize restrictions — Unclaimed lottery prizes.

(a) Proceeds of a lottery prize are subject to Arkansas state income tax.

(b)(1) Except as otherwise provided in this chapter, attachments, garnishments, or executions authorized and issued under Arkansas law shall be withheld if timely served upon the Arkansas Lottery Commission.

(2) Subdivision (b)(1) of this section does not apply to a retailer.

(c) The commission shall adopt rules to establish a system of verifying the validity of tickets or shares claimed to win lottery prizes and to effect payment of lottery prizes, except that:

(1)(A) A lottery prize, any portion of a lottery prize, or any right of any individual to a lottery prize is not assignable.

(B) A lottery prize or any portion of a lottery prize remaining unpaid at the death of a lottery prize winner shall be paid to the estate of the deceased lottery prize winner or to the trustee of a trust established by the deceased lottery prize winner as settlor if:

(i) A copy of the trust document or instrument has been filed with the commission along with a notarized letter of direction from the settlor; and

(ii) No written notice of revocation has been received by the commission before the settlor's death.

(C) Following a settlor's death and before any payment to a successor trustee, the commission shall obtain from the trustee a written agreement to indemnify and hold the commission harmless with respect to any claims that may be asserted against the commission arising from payment to or through the trust.

(D) Under an appropriate judicial order, an individual shall be paid the lottery prize to which a winner is entitled;

(2) A lottery prize shall not be paid arising from claimed tickets that are:

(A) Stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the commission within applicable deadlines;

(B) Lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery involved; or

(C) Not in compliance with rules and public or confidential validation and security tests of the commission appropriate to the particular lottery involved;

(3)(A) A particular lottery prize in any lottery shall not be paid more than one (1) time.

(B) If there is a determination that more than one (1) claimant is entitled to a particular lottery prize, the sole remedy of the claimants is the award to each of them of an equal share in the lottery prize;

(4)(A) Within one hundred eighty (180) days after the drawing in which a cash lottery prize has been won, a holder of a winning cash ticket or share from an Arkansas lottery or from a multistate or multisovereign lottery shall claim the cash lottery prize.

(B)(i) In an Arkansas lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within ninety (90) days after the playing of the instant game.

(ii) In any multistate or multisovereign lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within one hundred eighty (180) days after the playing of the instant game.

(C) If a valid claim is not made for a cash lottery prize within the applicable period, the cash lottery prize constitutes an unclaimed lottery prize for purposes of this section.

(D) The commission at any time may alter the time periods under subdivisions (c)(4)(A) and (B) of this section by rule; and

(5)(A) If practicable, an auditor chosen by the commission shall be present at a draw to determine the winners of a draw game to verify the accuracy of the results.

(B) The commission may request an auditor employed by the Division of Legislative Audit for the purposes of this subdivision (c)(5).

(d)(1) A lottery prize shall not be paid upon a ticket or share purchased or sold in violation of this chapter.

(2) A lottery prize described in subdivision (d)(1) of this section is an unclaimed lottery prize for purposes of this section.

(e) The commission is discharged of all liability upon payment of a lottery prize.

(f)(1) The commission shall not pay a lottery prize that exceeds the amount of five hundred dollars ($500) to any:

(A) Member of the commission;

(B) Employee of the commission; or

(C) Member of the immediate family of a member of the commission or an employee of the commission living in the same household as the member of the commission or the employee.

(2) If an officer, employee, agent, or subcontractor of a vendor has access to confidential information that may compromise the integrity of a lottery, a ticket or share shall not be purchased by and a lottery prize shall not be paid to the:

(A) Officer, employee, agent, or subcontractor of the vendor; or

(B) Immediate family of the officer, employee, agent, or subcontractor of the vendor.

(g)(1) During a fiscal year, the commission may expend up to two million five hundred thousand dollars ($2,500,000) of unclaimed lottery prize money for one (1) or more of the following:

(A) Increasing the pool from which future lottery prizes are to be awarded;

(B) Maintaining online game reserves at a fiscally sound level; or

(C) Prize promotion.

(2) On the last day of each fiscal year, the commission shall deposit into the trust account for net lottery proceeds the amount of unclaimed lottery prize money existing at the end of the fiscal year less one million dollars ($1,000,000).

(3) The commission shall include in its monthly reports to the Arkansas Lottery Commission Legislative Oversight Committee the following monthly and year-to-date amounts:

(A) Unclaimed lottery prize money;

(B) Expenditures from unclaimed lottery prize money; and

(C) Deposits to net lottery proceeds from unclaimed lottery prize money.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 36; 2010, No. 265, § 28; 2010, No. 294, § 28; 2011, No. 207, § 27; 2011, No. 1180, § 3.

Amendments. The 2009 amendment by No. 1405 substituted "request" for "select" in (c)(5)(B).

The 2010 amendment by identical acts Nos. 265 and 294 deleted (g)(2) and (3); and, in (g), inserted "lottery" and substituted "shall be added to" for "is not."

The 2011 amendment by No. 207 rewrote (f)(1); and added "living in the same . . . commission or the employee" at the end of (f)(1)(C).

The 2011 amendment by No. 1180 rewrote (g).

23-115-404. Confidential information.

(a)(1) Except as provided in subdivision (a)(2) of this section, the Arkansas Lottery Commission shall comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The following records or information shall be treated as confidential and are exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

(A) Information pertaining to the security of lottery games and lottery operations, including without limitation:

(i) Security measures, systems, or procedures; and

(ii) Security reports; and

(B) Any records exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The Division of Legislative Audit shall have full access to the records of the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 37.

Amendments. The 2009 amendment deleted "in the possession of the commission" preceding "shall" in the introductory language of (a)(2).

23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements.

(a) The Arkansas Lottery Commission may enter into an intelligence sharing, reciprocal use, or restricted use agreement with the United States Government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions that provide for and regulate the use of information provided and received under the agreement.

(b) Records, documents, and information in the possession of the commission received under subsection (a) of this section are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall not be released without the permission of the person or agency providing the records, documents, and information.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-406. Authority of local government.

(a)(1) The authority of local government concerning all matters relating to the operation of lotteries is preempted by this chapter.

(2) Local government shall not take any action, including without limitation the adoption of an ordinance, relating to the operation of lotteries.

(b) This section does not prohibit local government from requiring a retailer to obtain an occupational license for any business unrelated to the sale of tickets or shares.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-407. Video lotteries prohibited.

A video lottery shall not be used as part of a lottery under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-408. Video lotteries by institution or facility governed by other wagering laws prohibited.

This chapter does not permit the use of a video lottery for any purposes by any institution or facility governed by the:

(1) Arkansas Horse Racing Law, § 23-110-101 et seq.;

(2) Arkansas Greyhound Racing Law, § 23-111-101 et seq.; or

(3) Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-409. Laws under other wagering chapters not affected.

This chapter does not alter wagering that may be conducted under the Arkansas Horse Racing Law, § 23-110-101 et seq., the Arkansas Greyhound Racing Law, § 23-111-101 et seq., or the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

History. Acts 2009, No. 1405, § 38.

23-115-410. Compulsive gambling disorder treatment and educational programs.

(a) The Arkansas Lottery Commission shall provide an annual amount of at least two hundred thousand dollars ($200,000) for:

(1) Compulsive gambling disorder treatment programs; and

(2) Compulsive gambling disorder educational programs.

(b)(1) The commission shall work together with the Department of Human Services to implement the compulsive gambling disorder treatment programs and the compulsive gambling disorder educational programs under this section.

(2) The commission may contract with the department for providing all services related to and administration of the compulsive gambling disorder treatment programs and the compulsive gambling disorder educational programs.

(3) As part of its compulsive gambling disorder treatment and educational programs, the department shall make available a toll-free helpline telephone number providing information and referral services concerning compulsive gambling disorders.

(4) The department may promulgate rules to administer the compulsive gambling disorder treatment programs and the compulsive gambling disorder educational programs.

(c) The commission and the department shall provide a joint report to the Arkansas Lottery Commission Legislative Oversight Committee that includes without limitation:

(1) An annual summary of the amount of funding disbursed under this section and expenditures from the funding;

(2) A summary of what the compulsive gambling disorder treatment programs and compulsive gambling disorder educational programs provide; and

(3) The recommendations of the commission and the department for changes in the programs or funding.

History. Acts 2010, No. 265, § 29; 2010, No. 294, § 29; 2011, No. 207, § 28; 2011, No. 1179, § 2.

Amendments. The 2011 amendment by No. 207 added (c).

The 2011 amendment by No. 1179 inserted (b)(3) and redesignated the following subdivision accordingly.

23-115-411. Multidraw screen-based lottery game prohibited.

(a)(1) A multidraw screen-based lottery game shall not be used as part of a lottery under this chapter except as provided under subdivision (a)(2) of this section.

(2) All lottery games operated by the Arkansas Lottery Commission on or before June 29, 2014, are permitted and may continue as a part of the Arkansas Scholarship Lottery.

(b) The prohibition of multidraw screen-based lottery games shall expire on March 13, 2015.

History. Acts 2014 (2nd Ex. Sess.) No. 4; 2014 (2nd Ex. Sess.) No. 8.

Subchapter 5 — Vendors

SECTION.
23-115-501. Vendors — Requirements when submitting a bid, proposal, or offer — Major procurement contract.
23-115-502. Vendor — Performance bond or letter of credit.
23-115-503. Cancellation, suspension, revocation, or termination of major procurement contract.
23-115-504. Political contributions by vendors.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-501. Vendors — Requirements when submitting a bid, proposal, or offer — Major procurement contract.

(a) The Arkansas Lottery Commission shall investigate the financial responsibility, security, and integrity of a vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement contract.

(b) At the time of submitting a bid, proposal, or offer to the commission, the commission shall require the following items:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A)(i) If the vendor is a corporation, the officers, directors, and each stockholder of more than a ten percent (10%) interest in the corporation.

(ii) However, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including without limitation lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction;

(4)(A) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the vendor's license, contract, or operation and the disposition of each instance in each state or jurisdiction.

(B) If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive a license shall be disclosed;

(5)(A) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a traffic violation committed by the persons identified under subdivision (b)(1) of this section.

(B)(i) The commission may request that any or all of the persons identified under subdivision (b)(1) of this section undergo a state and federal criminal background check.

(ii) If requested, a state and federal criminal background check shall be conducted in the manner under § 23-115-601(e);

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including without limitation bonded indebtedness, and any pending litigation of the vendor;

(7) A disclosure of the vendor's most recent financial report, including any reports on internal control over financial reporting, and the most recent audit report of the vendor's operation as a service organization; and

(8) Additional disclosures and information that the commission may determine to be appropriate for the procurement involved.

(c) If any portion of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(d)(1) The commission shall not enter into a major procurement contract with a vendor that:

(A) Has not complied with the disclosure requirements described in subsection (b) of this section;

(B) Has been found guilty of a felony related to the security or integrity of a lottery in this or any other jurisdiction; or

(C) Has an ownership interest in an entity that has supplied lottery goods or services under contract to the commission regarding the request for proposals pertaining to those particular goods or services.

(2) The commission may terminate a major procurement contract with a vendor that does not comply with requirements for periodically updating disclosures during the tenure of the major procurement contract as may be specified in the major procurement contract.

(3) This section shall be construed broadly and liberally to achieve full disclosure of all information necessary to allow for a full and complete evaluation by the commission of the competence, integrity, background, and character of vendors for major procurement contracts.

(e)(1) A vendor who provides or proposes to provide goods or services under a major procurement contract shall not provide a gift or compensation to:

(A) The Director of the Arkansas Lottery Commission, a commission member, a commission employee, or a member of the Arkansas Lottery Commission Legislative Oversight Committee; or

(B) A member of the immediate family of the director, a commission member, a commission employee, or a member of the Arkansas Lottery Commission Legislative Oversight Committee.

(2)(A) Any person who knowingly violates subdivision (e)(1) of this section shall be guilty of a Class A misdemeanor.

(B)(i) The Arkansas Ethics Commission shall also have the authority to investigate and address alleged violations of subdivision (e)(1) of this section.

(ii) The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of subdivision (e)(1) of this section as granted to it under §§ 7-6-217 and 7-6-218.

(f)(1) A public official shall not knowingly own a financial interest in a vendor.

(2)(A) If a public official becomes aware that he or she owns a financial interest in a vendor, the public official shall divest the financial interest as soon as possible.

(B) A public official shall not divest the financial interest to a member of his or her immediate family.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 39.

Amendments. The 2009 amendment by No. 1405 rewrote the introductory language of (e)(1) and (e)(2).

23-115-502. Vendor — Performance bond or letter of credit.

(a)(1) At the execution of the major procurement contract with the Arkansas Lottery Commission, each vendor shall post a performance bond or letter of credit from a bank or credit provider acceptable to the commission in an amount as deemed necessary by the commission for that particular bid or major procurement contract.

(2) In lieu of the bond, to assure the faithful performance of its obligations, a vendor may deposit and maintain with the commission securities that are:

(A) Interest bearing or accruing; and

(B) Rated in one (1) of the three (3) highest classifications by an established, nationally recognized investment rating service.

(3) Securities eligible under this section are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations, if the solvent banks or savings associations are:

(i) Approved by the commission; and

(ii) Organized and existing under the laws of this state or under the laws of the United States;

(B) United States Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States Government; and

(D)(i) Corporate bonds approved by the commission.

(ii) The entity that issued the bonds shall not be an affiliate or subsidiary of the depositor.

(4) The securities shall be held in trust and shall at all times be in an amount as deemed necessary by the commission for the particular bid or major procurement contract.

(b)(1) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state.

(2) All major procurement contracts under this section shall be governed by the laws of this state except as provided in this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 40.

Amendments. The 2009 amendment by No. 1405 rewrote (a)(4).

23-115-503. Cancellation, suspension, revocation, or termination of major procurement contract.

(a) A major procurement contract executed by the Arkansas Lottery Commission under this chapter shall specify the reasons for which the major procurement contract may be canceled, suspended, revoked, or terminated by the commission. The reasons shall include without limitation:

(1) Commission of a violation of this chapter or a rule of the commission;

(2) Commission of any fraud, deceit, or misrepresentation;

(3) Conduct prejudicial to public confidence in a lottery;

(4) The vendor's filing for or being placed in bankruptcy or receivership; or

(5) Any material change as determined in the sole discretion of the commission in any matter considered by the commission in executing the major procurement contract with the vendor.

(b)(1) If upon approval of the commission the Director of the Arkansas Lottery Commission or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a major procurement contract is in the best interest of lotteries, the public welfare, or the State of Arkansas, the director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, a major procurement contract issued under this chapter.

(2) The major procurement contract may be temporarily suspended by the director or his or her designee without commission approval or prior notice pending a hearing.

(3) A major procurement contract may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in this section.

(c) Hearings under this section shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-504. Political contributions by vendors.

(a) The General Assembly finds:

(1) That the integrity of the Arkansas Lottery Commission and lotteries is of utmost importance; and

(2) That the people of the State of Arkansas should have confidence and be assured that public officials are free of any untoward political influence by vendors.

(b) A vendor awarded a major procurement contract for lottery equipment or tickets or an officer, employee, or agent of a vendor awarded a major procurement contract for lottery equipment or tickets shall not make a political contribution to a public official or a candidate for election as a public official.

(c) A vendor proposing to provide goods or services under a major procurement contract or an officer, employee, or agent of a vendor proposing to provide goods or services under a major procurement contract shall not:

(1) Make a political contribution to a public official or a candidate for election as a public official while the award of the major procurement contract is pending; and

(2) While the award of the major procurement contract is pending, promise to make a political contribution to a public official or a candidate for election as a public official after the award of the major procurement contract.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 41.

Amendments. The 2009 amendment by No. 1405 rewrote (b); and added (c).

Subchapter 6 — Retailers

SECTION.
23-115-601. Retailers.
23-115-602. Retailer license.
23-115-603. Fidelity fund — Retailer fee — Reserve account to cover losses — Retailer bond.
23-115-604. Cancellation, suspension, revocation, or termination of retailer license.
23-115-605. Retailers — Fiduciary duty — Protection against loss.
23-115-606. Retailer — Rental payments based on percentage of retail sales.
23-115-607. Business closure authority — Notice.
23-115-608. Administrative hearing.
23-115-609. Judicial relief.
23-115-610. Business closure procedure.
23-115-611. Revocation and suspension of business license.
23-115-612. Authority to promulgate rules.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1173, § 18: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2013, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-601. Retailers.

(a) The General Assembly recognizes that to conduct a successful lottery, the Arkansas Lottery Commission must develop and maintain a statewide network of retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lotteries while ensuring the integrity of lottery operations, games, and activities.

(b) The commission shall make every effort to provide small retailers a chance to participate in the sales of tickets or shares.

(c) The commission shall provide for compensation to retailers in the form of commissions in an amount of not less than five percent (5%) of gross sales of tickets and shares and may provide for other forms of compensation for services rendered in the sale or cashing of tickets or shares.

(d)(1) For purposes of display, the commission shall issue a license to each person that it licenses as a retailer.

(2)(A) Every retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its license.

(B) A license is not assignable or transferable.

(e)(1) A person considered as a retailer shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The commission shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(f)(1) The commission shall develop a list of objective criteria upon which the qualification of retailers shall be based.

(2) The commission shall develop separate criteria to govern the selection of retailers of instant tickets.

(3) In developing the criteria, the commission shall consider certain factors, including without limitation:

(A) The applicant's financial responsibility;

(B) Security of the applicant's place of business or activity;

(C) Accessibility to the public;

(D) The applicant's integrity; and

(E) The applicant's reputation.

(4) The commission shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office.

(5) The criteria shall include without limitation the following:

(A)(i) The applicant shall be current in filing all applicable tax returns to the State of Arkansas and in payment of all taxes, interest, and penalties owed to the State of Arkansas, excluding items under formal appeal under applicable statutes.

(ii) The Department of Finance and Administration shall provide to the commission the information required under subdivision (f)(5)(A)(i) of this section;

(B) The commission shall not select as a retailer any person who:

(i) Has been convicted of a criminal offense related to the security or integrity of a lottery in this or any other jurisdiction;

(ii)*(a)* Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one (1) year of imprisonment or a fine of more than one thousand dollars ($1,000), or both.

(b) Subdivision (f)(5)(B)(ii)*(a)* of this section shall not apply if the person's civil rights have been restored and at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in subdivision (f)(5)(B)(ii)*(a)* of this section;

(iii) Has been found to have violated this chapter or any rule, policy, or procedure of the commission unless:

(a) Ten (10) years have passed since the violation; or

(b) The commission finds the violation both minor and unintentional in nature;

(iv) Is a vendor or an employee or agent of a vendor doing business with the commission;

(v) Is a member of the commission, or a member of the immediate family of a member of the commission;

(vi) Has made a statement of material fact to the commission knowing the statement to be false; or

(vii)*(a)* Is engaged exclusively in the business of selling tickets or shares.

(b) Subdivision (f)(5)(B)(vii)*(a)* of this section does not preclude the commission from selling or giving away tickets or shares for promotional purposes;

(C) A person applying to become a retailer shall be charged a uniform application fee determined by rule for each lottery outlet;

(D) All retailer licenses may be renewable annually in the discretion of the commission unless canceled or terminated by the commission; and

(E) The commission may establish by rule a reasonable fee for the issuance, reissuance, fine, or penalty associated with the process, procedures, or enforcement necessary to issue or maintain a retailer license, including without limitation to cover the cost of:

(i) An initial and any subsequent state and federal criminal background check under this subchapter; and

(ii) The reporting, communications technology, and banking processes necessary to implement and enforce this subchapter.

(g)(1) A retailer or an applicant to be a retailer shall not provide a gift or compensation to:

(A) The Director of the Arkansas Lottery Commission, a commission member, or a commission employee; or

(B) A member of the immediate family of the director, a commission member, or a commission employee.

(2)(A) Any person who knowingly violates subdivision (g)(1) of this section shall be guilty of a Class A misdemeanor.

(B)(i) The Arkansas Ethics Commission shall also have the authority to investigate and address alleged violations of subdivision (g)(1) of this section.

(ii) The Arkansas Ethics Commission shall have the same power and authority to enforce the provisions of subdivision (g)(1) of this section as granted to it under §§ 7-6-217 and 7-6-218.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 42; 2010, No. 265, § 30; 2010, No. 294, § 30; 2013, No. 1173, § 16.

Amendments. The 2009 amendment by No. 1405 inserted "or compensation" in the introductory language of (g)(1); and rewrote (g)(2).

The 2010 amendment by identical acts Nos. 265 and 294 inserted "member of the commission, or a" in (f)(5)(B)(v).

The 2013 amendment deleted (f)(5)(C)(ii); added "and" at the end of (f)(5)(D); and added (f)(5)(E).

23-115-602. Retailer license.

(a) A retailer license is not transferable or assignable.

(b) A retailer shall not contract with any person for lottery goods or services except with the approval of the Arkansas Lottery Commission.

(c) Tickets and shares shall be sold only by the retailer stated on the retailer's license issued by the commission under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-603. Fidelity fund — Retailer fee — Reserve account to cover losses — Retailer bond.

(a)(1) The Arkansas Lottery Commission shall establish a fidelity fund separate from all other funds and shall assess each retailer an annual fee not to exceed one hundred dollars ($100) per sales location to be deposited into the fidelity fund.

(2) Moneys deposited into the fidelity fund may be:

(A) Invested or deposited into one (1) or more interest-bearing accounts;

(B) Used to cover losses the commission experiences due to nonfeasance, misfeasance, or malfeasance of a retailer; and

(C) Used to purchase blanket bonds covering the commission against losses from all retailers.

(3) At the end of each fiscal year, the commission shall pay to the trust account managed and maintained by the Department of Higher Education any amount in the fidelity fund that exceeds five hundred thousand dollars ($500,000), and the funds shall be considered net proceeds from a lottery.

(b)(1) A reserve account may be established as a general operating expense to cover amounts deemed uncollectable.

(2) The commission shall establish procedures for minimizing any losses that may be deemed uncollectable and shall exercise and exhaust all available options in those procedures before writing off amounts to this account.

(c)(1) The commission shall require a retailer to post an appropriate bond, as determined by the commission, using an insurance company acceptable to the commission.

(2) If applicable, the amount of the bond shall not exceed the district sales average of tickets for two (2) billing periods.

(d)(1) In its discretion, the commission may allow a retailer to deposit and maintain with the commission securities that are interest-bearing or accruing.

(2) Securities eligible under this subsection are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest; or

(C) Federal agency securities by an agency or instrumentality of the United States Government.

(3) The securities shall be held in trust in the name of the commission.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-604. Cancellation, suspension, revocation, or termination of retailer license.

(a) A retailer license executed by the Arkansas Lottery Commission under this chapter shall specify the reasons for which the retailer license may be canceled, suspended, revoked, or terminated by the commission. The reasons shall include without limitation:

(1) Commission of a violation of this chapter or a rule of the commission;

(2) Failure to accurately or timely account for tickets, lottery games, revenues, or prizes as required by the commission;

(3) Commission of any fraud, deceit, or misrepresentation;

(4) Insufficient sales;

(5) Conduct prejudicial to public confidence in a lottery;

(6) The retailer's filing for or being placed in bankruptcy or receivership;

(7) Any material change as determined in the sole discretion of the commission in any matter considered by the commission in executing the license with the retailer; or

(8) Failure to meet any of the objective criteria established by the commission under this chapter.

(b)(1) If upon approval of the commission the Director of the Arkansas Lottery Commission or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a retailer license is in the best interest of lotteries, the public welfare, or the State of Arkansas, the director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, a retailer license issued under this chapter.

(2) The retailer license may be temporarily suspended by the director or his or her designee without commission approval or prior notice pending a hearing.

(3) A retailer license may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in subsection (a) of this section.

(4) Hearings under this subsection shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-605. Retailers — Fiduciary duty — Protection against loss.

(a)(1) All proceeds from the sale of tickets or shares constitute a trust fund until paid to the Arkansas Lottery Commission either directly or through the commission's authorized collection representative.

(2) A retailer and officers of a retailer's business have a fiduciary duty to preserve and account for retail lottery proceeds, and retailers are personally liable for all lottery proceeds.

(3) For the purpose of this section, lottery proceeds include without limitation:

(A) Unsold instant tickets received by a retailer;

(B) Cash proceeds of the sale of any lottery products;

(C) Net of allowable sales commissions; and

(D) Credit for lottery prizes paid to winners by retailers.

(4) Sales proceeds and unused instant tickets shall be delivered to the commission or its authorized collection representative upon demand.

(b)(1) The commission shall require retailers to place all lottery proceeds due the commission in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid to the commission.

(2) At the time of the deposit, lottery proceeds shall be deemed to be the property of the commission.

(3) The commission may require a retailer to establish a single separate electronic funds transfer account when available for the purpose of:

(A) Receiving moneys from ticket or share sales;

(B) Making payments to the commission; and

(C) Receiving payments for the commission.

(4) Unless authorized in writing by the commission, each retailer shall establish a separate bank account for lottery proceeds that shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) When an individual who receives proceeds from the sale of tickets or shares in the capacity of a retailer becomes insolvent or dies insolvent, the proceeds due the commission from the individual or his or her estate have preference over all debts or demands.

(d) If the commission determines that a retailer failed to comply with subsection (b) of this section three (3) times within any consecutive twenty-four-month period, the commission may pursue business closure against the retailer under this subchapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 43.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2009, No. 1405. Former subsection (d) of this section was enacted by Acts 2009, Nos. 605 and 606 to read as follows:

"(d) If the commission determines that a retailer failed to comply with subsection (b) of this section three (3) times within any consecutive twenty-four-month period, the commission may refer the retailer to the Department of Finance and Administration with a recommendation that the department pursue business closure against the retailer as a noncompliant taxpayer as provided in § 26-18-1001 et seq.".

Amendments. The 2009 amendment by No. 1405 rewrote (d).

23-115-606. Retailer — Rental payments based on percentage of retail sales.

If a retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and the computation of retail sales is not explicitly defined to include sales of tickets or shares, only the compensation received by the retailer from the Arkansas Lottery Commission may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-607. Business closure authority — Notice.

(a) In addition to all other remedies provided by law for failure to remit lottery proceeds due the Arkansas Lottery Commission, the

Director of the Arkansas Lottery Commission may close the business of a retailer if the retailer fails to comply with § 23-115-605(b) three (3) times within any consecutive twenty-four-month period.

(b)(1) The director shall give notice to the retailer that the third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period may result in the closure of the business.

(2) The notice shall be in writing and delivered to the retailer by:

(A) The United States Postal Service; or

(B) Hand delivery.

(c)(1) If the retailer has a third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period after the issuance of the notice provided in subsection (b) of this section and the director chooses to close the business, the director shall notify the retailer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of receipt of the notice unless the retailer avoids closure of the business under subsection (d) of this section.

(2) If the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of an act to avoid business closure under subsection (d) of this section is timely when performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(d) A retailer may avoid closure of the business by:

(1) Remitting the delinquent lottery proceeds; or

(2) Entering into a written payment agreement approved by the director to satisfy the lottery proceeds delinquency.

History. Acts 2009, No. 1405, § 44.

23-115-608. Administrative hearing.

(a) A retailer may request an administrative hearing concerning the decision of the Director of the Arkansas Lottery Commission to close the retailer's business.

(b) Within five (5) business days after the delivery or attempted delivery of the notice required by § 23-115-607(c), the retailer may file a written protest, signed by the retailer or his or her authorized agent, with the director stating the reasons for opposing the closure of the business and requesting an administrative hearing.

(c)(1) A retailer may request that an administrative hearing be held:

(A) In person;

(B) By telephone;

(C) Upon written documents furnished by the retailer; or

(D) Upon written documents and any evidence to be produced by the retailer at an administrative hearing.

(2) The director may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

(3) A retailer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing before the rendering of the administrative decision.

(d) The administrative hearing shall be conducted by a hearing officer appointed by the director.

(e)(1) The hearing officer shall:

(A) Set the time and place for a hearing; and

(B) Give the retailer notice of the hearing.

(2) At the administrative hearing, the retailer may:

(A) Be represented by an authorized representative; and

(B) Present evidence in support of his or her position.

(f) The administrative hearing shall be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

(g) The administrative hearing and determinations made by the hearing officer under this subchapter are subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) The defense or defenses to the closure of a business under this subchapter are:

(1) Written proof that the retailer remitted the delinquent lottery proceeds due; or

(2) That the retailer has entered into a written payment agreement, approved by the director, to satisfy the lottery proceeds delinquency.

(i) The decision of the hearing officer shall be in writing with copies delivered to the retailer and the director by the United States Postal Service or by hand delivery.

History. Acts 2009, No. 1405, § 44.

23-115-609. Judicial relief.

(a)(1) If the decision of the hearing officer under § 23-115-608 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the retailer.

(2) The retailer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

(b)(1) Jurisdiction for a suit under this section to contest a determination of the Director of the Arkansas Lottery Commission shall be in Pulaski County Circuit Court, where the matter shall be tried de novo.

(2)(A) If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction against the retailer prohibiting the further operation of the business.

(B) If a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

(3) An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

(c) The procedures established by § 23-115-608 and this section are the sole methods for seeking relief from a written decision to close the business of a retailer for failure to comply with § 23-115-605(b).

(d) The decision to close the business of a retailer shall be final:

(1) If the retailer fails to:

(A) Request an administrative hearing under § 23-115-608; or

(B) Seek judicial relief under this section; or

(2) Upon the final decision of a circuit court or an appellate court.

(e)(1) It is unlawful for a business to continue in operation after a business closure order is issued that is:

(A) Upheld on appeal under this subchapter; or

(B) Not appealed by the retailer under this subchapter.

(2) Upon conviction, any person responsible for the decision to operate the business in violation of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 2009, No. 1405, § 44.

23-115-610. Business closure procedure.

(a) If a retailer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after administrative or judicial review, the Director of the Arkansas Lottery Commission shall direct the Department of Finance and Administration to affix a written notice to all entrances of the business that:

(1) Identifies the business as being subject to a business closure order; and

(2) States that the business is prohibited from further operation.

(b) The Director of the Arkansas Lottery Commission may also direct that the business be locked or otherwise secured so that it may not be operated.

(c) The Director of the Department of Finance and Administration may request the assistance of the Department of Arkansas State Police or any state or local law enforcement official to post the notice or to secure the business as authorized in this section.

(d) The commission may reimburse the Department of Finance and Administration for the costs of administering this section after review of the amount by the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 1405, § 44.

23-115-611. Revocation and suspension of business license.

(a) The closure of a business under this subchapter shall be grounds for cancellation, suspension, revocation, or termination of a retailer license under § 23-115-604.

(b) The closure of a business under this subchapter shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.

(c) After the decision to close the retailer's business becomes final, the Director of the Arkansas Lottery Commission shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

History. Acts 2009, No. 1405, § 44.

23-115-612. Authority to promulgate rules.

The Arkansas Lottery Commission may promulgate rules necessary for the implementation and enforcement of this subchapter.

History. Acts 2009, No. 1405, § 44.

Subchapter 7 — Procurements

SECTION.

23-115-701. Procurements — Major procurement contracts — Competitive bidding.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-701. Procurements — Major procurement contracts — Competitive bidding.

(a)(1) The Arkansas Lottery Commission may purchase, lease, or lease-purchase goods or services as necessary for effectuating the purposes of this chapter.

(2) The commission may make procurements that integrate functions, including without limitation:

(A) Lottery design;

(B) Ticket distribution to retailers;

(C) Supply of goods and services; and

(D) Advertising.

(3) In all procurement decisions, the commission shall:

(A) Take into account the particularly sensitive nature of lotteries; and

(B) Act to promote and ensure:

(i) Security, honesty, fairness, and integrity in the operation and administration of lotteries; and

(ii) The objectives of raising net proceeds for the benefit of scholarships and grants.

(b) Except as provided in subsections (c) and (d) of this section, the commission shall comply with the Arkansas Procurement Law, § 19-11-201 et seq.

(c)(1) The commission shall adopt rules concerning the procurement process for major procurement contracts.

(2) The commission shall arrange for the solicitation and receipt of competitive bids for major procurement contracts.

(3) Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the commission is not required to accept the lowest responsible bid for major procurement contracts but shall select a bid that provides the greatest long-term benefit to the state, the greatest integrity for the commission, and the best service and products for the public.

(d) In any bidding process, the commission may administer its own bidding and procurement or may utilize the services of the Department of Finance and Administration.

(e)(1) Each proposed major procurement contract and each amendment or modification to a proposed or executed major procurement contract shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee for review at least thirty (30) days before the execution date of the major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

(2) The Arkansas Lottery Commission Legislative Oversight Committee shall provide the commission with its review as to the propriety of the major procurement contract and each amendment or modification to a proposed or executed major procurement contract within thirty (30) days after receipt of the proposed major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 45; 2010, No. 265, § 31; 2010, No. 294, § 31.

Amendments. The 2009 amendment by No. 1405 substituted "Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the" for "The" in (c)(3).

The 2010 amendment by identical acts Nos. 265 and 294, in (e)(1) and (2), inserted "and each amendment or modification to a proposed or executed major procurement contract" and added "or the amendment or modification to a proposed or executed major procurement contract" at the end; and inserted "at least thirty

(30) days" in (e)(1).

Subchapter 8 — Lottery Proceeds

SECTION.
23-115-801. Lottery proceeds.
23-115-802. Scholarship Shortfall Reserve Trust Account.
SECTION.
23-115-803. Disposition of funds.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1173, § 18: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2013, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-801. Lottery proceeds.

(a)(1) All lottery proceeds are the property of the Arkansas Lottery Commission.

(2)(A) The commission shall pay its operating expenses from its lottery proceeds.

(B)(i) An amount of lottery proceeds determined by the commission to maximize net proceeds shall be made available as prize money.

(ii)*(a)* Subdivision (a)(2)(B)(i) of this section does not create any lien, entitlement, cause of action, or other private right.

(b) In setting the terms of a lottery, the commission shall determine any rights of holders of tickets or shares.

(3) The percentage of lottery proceeds determined by the commission to be net proceeds shall equal an amount determined by the commission to maximize net proceeds.

(b)(1) On or before the fifteenth day of each month, the commission shall deposit the net proceeds from the lottery into one (1) or more trust accounts at one (1) or more financial institutions.

(2) The commission shall follow the investment policy guidelines of the State Board of Finance in selecting a financial institution and managing the net proceeds from the lottery deposited into a trust account.

(c)(1) The Director of the Department of Higher Education shall certify to the commission the amount of net proceeds from the lottery needed to fund the scholarships awarded to recipients under § 6-85-201 et seq. for each semester of an academic year.

(2)(A)(i) The commission shall transfer the funds requested by the director under subdivision (c)(1) of this section into one (1) or more trust accounts at one (1) or more financial institutions meeting the requirements of subdivision (b)(2) of this section maintained by the Department of Higher Education.

(ii) The director shall disburse trust account funds only in the name of the recipient:

(a) To an approved institution of higher education; or

(b) If a recipient transfers to another approved institution of higher education, to the approved institution of higher education where the recipient transferred.

(3) By August 1 of each year, the director shall provide to the commission and to the Arkansas Lottery Commission Legislative Oversight Committee for the academic year just ended an accounting of all trust accounts maintained by the department, including without limitation:

(A) Total deposits to all trust accounts;

(B) Total disbursements from the trust accounts; and

(C) The balance remaining in the trust accounts.

(d)(1) The General Assembly finds that:

(A) The administration of scholarships with proceeds from the lottery are expenses of the commission; and

(B) Because the department has the expertise and experienced staff needed to efficiently and appropriately administer the scholarships, the commission shall use the services of the department to administer scholarships funded with net proceeds from the lottery.

(2)(A) Annually by April 1, the department shall provide to the commission and to the Arkansas Lottery Commission Legislative

Oversight Committee the department's budget for the administrative expenditures allowed under this subsection.

(B) Annually by October 31, the department shall provide an invoice to the commission for reimbursement of the administrative expenditures allowed under this subsection, including without limitation:

(i) For each employee the:

(a) Type of position, whether full-time, part-time, permanent, or temporary; and

(b) Salary paid;

(ii) A description of other expenditures requested in the invoice; and

(iii) An explanation of the increase, if any, of actual expenditures over the budgeted expenditures.

(3)(A) Annually by November 1, the commission shall file a copy of the invoice with the Arkansas Lottery Commission Legislative Oversight Committee for its review.

(B) The Arkansas Lottery Commission Legislative Oversight Committee shall review the invoice and forward its comments, if any, to the commission.

(C) The commission shall reimburse the department for the costs of administering the scholarship awards funded with net proceeds from the lottery after the Arkansas Lottery Commission Legislative Oversight Committee's review under this subsection.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 32; 2010, No. 294, § 32; 2013, No. 1173, § 17.

A.C.R.C. Notes. The 2013 amendment by Act 1173 omitted the following language from (d) without striking through the language to indicate its repeal: "(4) The department shall refund to the Higher Education Grants Fund Account the amount of a reimbursement received from the commission under this subsection for services provided and funded from the fund account."

Amendments. The 2010 amendment by identical acts Nos. 265 and 294 deleted the (c)(1)(A) designation and (c)(1)(B); and inserted "each semester of" near the end of (c)(1).

The 2013 amendment added present (d)(2), (d)(3)(A) and (d)(3)(B); redesignated former (d)(2) as present (d)(3)(C); substituted "the Arkansas Lottery Commission Legislative Oversight Committee's review under this subsection" for "review of the reimbursement amount by the Arkansas Lottery Commission Legislative Oversight Committee" in (d)(3)(C).

23-115-802. Scholarship Shortfall Reserve Trust Account.

(a) The Arkansas Lottery Commission shall maintain a Scholarship Shortfall Reserve Trust Account.

(b)(1) An amount equal to four percent (4%) of the total amount of net proceeds disbursed during the preceding fiscal year in the form of scholarships and grants for higher education shall be deposited from lottery proceeds each year until the amount in the account equals twenty million dollars ($20,000,000).

(2) Thereafter, only an amount necessary to maintain the account in an amount equal to twenty million dollars ($20,000,000) shall be deposited into the account.

(3) Any amount in the trust account exceeding twenty million dollars ($20,000,000) shall be considered net proceeds and shall be deposited annually into one (1) or more trust accounts at one (1) or more financial institutions by July 1 of each year.

(c) If net proceeds in any year are not sufficient to meet the amount allocated for higher education scholarships, the account may be drawn upon to meet the deficiency.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 46; 2010, No. 265, §§ 33, 34; 2010, No. 294, §§ 33, 34.

A.C.R.C. Notes. As enacted, this section included the following language: "(d) This section is effective on July 1, 2010."

Amendments. The 2009 amendment by No. 1405 substituted "four percent (4%)" for "ten percent (10%)" in (b)(1); substituted "twenty million dollars ($20,000,000)" for "fifty million dollars ($50,000,000)" in (b)(1) and (b)(2); and added (b)(3).

The 2010 amendment by identical acts Nos. 265 and 294 substituted "account" for "fund" in (b)(3); and deleted (c)(2).

23-115-803. Disposition of funds.

(a)(1) To effectuate the Arkansas Lottery Commission's purposes, the commission may borrow moneys from the State of Arkansas or accept and expend moneys from the State of Arkansas and shall repay any sums borrowed from the state as soon as practicable.

(2) As used in this section, "purposes" includes without limitation the payment of the initial expenses of initiation, administration, and operation of the commission and lotteries.

(3) The commission shall not issue bonds for any purpose.

(b)(1) The commission shall be self-sustaining and self-funded.

(2)(A) Except as provided in subsection (a) of this section, moneys in the General Revenue Fund Account of the State Apportionment Fund shall not be used or obligated to pay the expenses of the commission or prizes of a lottery.

(B) A claim for the payment of an expense of a lottery or prizes of a lottery shall not be made against any moneys other than moneys credited to the commission's operating account.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

Subchapter 9 — Penalties

SECTION.
23-115-901. Sale of ticket or share to person under 18 years of age prohibited — Penalty.
23-115-902. Fraud — Penalty.
23-115-903. False statement on license application — Penalty.
23-115-904. Inconsistent statutes inapplicable.

Effective Dates. Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-901. Sale of ticket or share to person under 18 years of age prohibited — Penalty.

(a) A retailer who knowingly sells a ticket or share to a person under eighteen (18) years of age or permits a person under eighteen (18) years of age to play a lottery is guilty of a violation and subject to the following penalties:

(1) A fine not to exceed two hundred fifty dollars ($250) for a first violation within a forty-eight-month period;

(2) For a second violation within a forty-eight-month period:

(A) A fine not to exceed five hundred dollars ($500); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed two (2) days;

(3) For a third violation within a forty-eight-month period:

(A) A fine not to exceed one thousand dollars ($1,000); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed seven (7) days;

(4) For a fourth or subsequent violation within a forty-eight-month period:

(A) A fine not to exceed two thousand dollars ($2,000); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed fourteen (14) days; and

(5) For a fifth or subsequent violation within a forty-eight-month period, the retailer license issued under § 23-115-601 et seq. may be revoked.

(b) An employee of a retailer who violates this section is subject to a fine not to exceed one hundred dollars ($100) per violation.

(c) It is an affirmative defense to a prosecution under this section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.

(d) A person convicted of violating any provision of this section whose retailer license is suspended or revoked upon conviction shall surrender to the court his or her retailer license, and the court shall transmit the retailer license to the Arkansas Lottery Commission and instruct the commission:

(1) To suspend or revoke the person's retailer license or to not renew the license; and

(2) Not to issue any new retailer license to that person for the period of time determined by the court in accordance with this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-902. Fraud — Penalty.

The offense of lottery fraud and penalties for a conviction of lottery fraud are provided under § 5-55-501.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 207, § 29.

Amendments. The 2011 amendment rewrote the section.

23-115-903. False statement on license application — Penalty.

(a) A person shall not knowingly make:

(1) A material false statement in an application for a license or proposal to conduct a lottery; or

(2) A material false entry in any book or record that is compiled, maintained, or submitted to the Arkansas Lottery Commission.

(b)(1) A person who violates this section is guilty of a Class D felony.

(2) A person convicted for violating subsection (a) of this section is subject to an additional fine of not more than twenty-five thousand dollars ($25,000) or the dollar amount of the material false entry or material false statement, whichever is greater.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-904. Inconsistent statutes inapplicable.

(a) Section 5-66-101 et seq. and all other laws and parts of laws inconsistent with this chapter are expressly declared not to apply to any person engaged in, conducting, or otherwise participating in lotteries.

(b) A person is not guilty of any criminal offense set forth in § 5-66-101 et seq. or any other law relating to illegal gambling to the extent the person relied on any rule, order, finding, or other determination by the Arkansas Lottery Commission that the activity was authorized by this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

Subchapter 10 — Debtors Owing Money to the State

SECTION.
23-115-1001. Legislative intent.
23-115-1002. Definitions.
23-115-1003. Collection remedy.
23-115-1004. List of debtors — Withholding winnings — Ranking of liens.
23-115-1005. Confidential information.
23-115-1006. Application.

23-115-1001. Legislative intent.

(a) The purposes of this subchapter are to establish:

(1) A policy and to provide a system whereby all claimant agencies of this state in conjunction with the Arkansas Lottery Commission shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for lottery prizes under this chapter from the commission; and

(2) Procedures for setting off against any prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act.

(b) This subchapter shall be liberally construed to effectuate the purposes stated in subsection (a) of this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1002. Definitions.

As used in this subchapter:

(1) "Claimant agency" means a state agency, department, board, bureau, commission, or authority:

(A) To which a person owes a debt; or

(B) That acts on behalf of a person to collect a debt;

(2) "Debt" means a:

(A) Liquidated sum due and owing any claimant agency when the sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum; or

(B) Sum that is due and owing any person and is enforceable by the state;

(3) "Debtor" means an individual owing money to or having a delinquent account with a claimant agency when the obligation has not been:

(A) Adjudicated as satisfied by court order;

(B) Set aside by court order; or

(C) Discharged in bankruptcy; and

(4) "Prize" means the proceeds of any lottery prize awarded under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1003. Collection remedy.

The collection remedy authorized by this subchapter is in addition to and not in substitution for any other remedy available by law.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1004. List of debtors — Withholding winnings — Ranking of liens.

(a)(1) A claimant agency may submit to the Arkansas Lottery Commission a list of the names of all debtors owing in excess of one hundred dollars ($100) to the claimant agency or to persons on whose behalf the claimant agency is acting.

(2) The full amount of the debt is collectible from any prize without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings.

(3) The list shall constitute a valid lien upon and claim of lien against the prize of any debtor named in the list.

(4) The list shall contain:

(A) The name of each debtor;

(B) The social security number of each debtor if available; and

(C) Any other information that would assist the commission in identifying each debtor named in the list.

(b)(1) The commission shall withhold any prizes subject to the lien created by this section and send notice to the winner by certified mail, return receipt requested, of the action and the reason the prizes were withheld.

(2)(A) However, if the winner appears and claims prizes in person, the commission shall notify the winner at that time by hand delivery of the action.

(B) If the debtor does not protest the withholding of the prizes in writing within thirty (30) days of receipt of the notice, the commission shall pay the prizes to the claimant agency.

(C) If the debtor protests the withholding of the prizes within thirty (30) days of receipt of the notice, the commission shall:

(i) File an action in interpleader in the circuit court of the county where the debtor resides;

(ii) Pay the disputed sum into the registry of the circuit court; and

(iii) Give notice to the claimant agency and debtor of the initiation of the action.

(c) The liens created by this section are ranked by priority as follows:

(1) Taxes due the state;

(2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The commission is not required to deduct claimed debts from prizes paid out by retailers or entities other than the commission.

(e) Any list of debt provided under this section shall be provided periodically as the commission shall provide by rule, and the commission is not obligated to retain the lists or deduct debts appearing on the lists beyond the period determined by the rules.

(f) The commission may prescribe forms and promulgate rules it deems necessary to implement this section.

(g) The commission and any claimant agency shall incur no civil or criminal liability for good faith adherence to this section.

(h) The claimant agency shall pay the commission for all costs incurred by the commission in setting off debts in the manner provided in this subchapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1005. Confidential information.

(a)(1) Notwithstanding any other confidentiality statute, the Arkansas Lottery Commission may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this subchapter.

(2) Information shall be used by a claimant agency only in the pursuit of its debt collection duties and practices.

(b) Confidential information obtained by a claimant agency from the commission under this section shall retain its confidentiality.

(c) An employee or prior employee of a claimant agency who unlawfully discloses any information for any other purpose, except as otherwise specifically authorized by law, is guilty of a Class A misdemeanor.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-1006. Application.

This subchapter applies only to prizes of more than five hundred dollars ($500).

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

Subchapter 11 — Arkansas Lottery Commission Legislative Oversight Committee

SECTION.

23-115-1101. Arkansas Lottery Commission Legislative Oversight Committee.
23-115-1102. Filing of information with Arkansas Lottery Commission Legislative Oversight Committee.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 207, § 31: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that increasing the number of Arkansans obtaining postsecondary credentials is critical to the economic health of the state and its citizens; that the Arkansas Scholarship Lottery provides the opportunity for tens of thousands of Arkansans to obtain postsecondary education; that the deadline for scholarship applications is June 1; that the financial integrity of the Arkansas Scholarship Lottery is critical to the continued existence of the scholarships; that the reporting and research provisions of this act are critical for timely decisions by the General Assembly on scholarship awards; and that this act is immediately necessary because the Department of Higher Education must promulgate rules to implement this act well before June 1, 2011, in order to provide eligible Arkansans the opportunity to apply for the scholarship. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-1101. Arkansas Lottery Commission Legislative Oversight Committee.

(a) The Arkansas Lottery Commission Legislative Oversight Committee is established.

(b) The Arkansas Lottery Commission Legislative Oversight Committee shall consist of the following members of the General Assembly appointed as follows:

(1) Six (6) members of the House of Representatives shall be appointed to the Arkansas Lottery Commission Legislative Oversight Committee by the Speaker of the House of Representatives; and

(2) Six (6) members of the Senate shall be appointed to the Arkansas Lottery Commission Legislative Oversight Committee by the President Pro Tempore of the Senate.

(c) In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Arkansas Lottery Commission Legislative

Oversight Committee and may consider racial, gender, and geographical diversity among the membership.

(d) The Arkansas Lottery Commission Legislative Oversight Committee shall:

(1) Review whether expenditures of lottery proceeds have been in accordance with this chapter;

(2) Review proposed rules of the Arkansas Lottery Commission;

(3)(A) Review proposed contracts of twenty-five thousand dollars ($25,000) or more before the execution of the contracts.

(B) The commission shall provide a list of all contracts less than twenty-five thousand dollars ($25,000) to the Arkansas Lottery Commission Legislative Oversight Committee on a monthly basis;

(4) Review reports filed with the Arkansas Lottery Commission Legislative Oversight Committee by the Department of Higher Education, including without limitation reports filed under §§ 6-85-205 and 6-85-220;

(5) Perform its duties under § 6-85-220; and

(6) Study other lottery matters as the Arkansas Lottery Commission Legislative Oversight Committee considers necessary to fulfill its mandate.

(e)(1) Annually by December 15, the Arkansas Lottery Commission Legislative Oversight Committee shall provide to the General Assembly:

(A) Any analysis or findings resulting from its activities under this section that the Arkansas Lottery Commission Legislative Oversight Committee deems relevant; and

(B) Its recommendations for any changes to the:

(i) Scholarship award amounts;

(ii) Number or type of scholarships; and

(iii) Scholarship eligibility requirements.

(2) The Arkansas Lottery Commission Legislative Oversight Committee may make interim reports to the General Assembly regarding the expenditure of net lottery revenues.

(f)(1) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a Cochair of the Arkansas Lottery Commission Legislative Oversight Committee.

(2) The Arkansas Lottery Commission Legislative Oversight Committee shall meet at least quarterly upon the joint call of the cochairs of the Arkansas Lottery Commission Legislative Oversight Committee.

(3) A majority of the Arkansas Lottery Commission Legislative Oversight Committee constitutes a quorum.

(4) No action may be taken by the Arkansas Lottery Commission Legislative Oversight Committee except by a majority vote at a meeting at which a quorum is present.

(g) Members of the Arkansas Lottery Commission Legislative Oversight Committee are entitled to per diem and mileage at the same rate authorized by law for attendance at meetings of interim committees of the General Assembly and shall be paid from the same source.

(h)(1) With the consent of both the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Arkansas Lottery Commission Legislative Oversight Committee may meet during a session of the General Assembly to perform its duties under this chapter.

(2) This subsection does not limit the authority of the Arkansas Lottery Commission Legislative Oversight Committee to meet during a recess as authorized by § 10-3-211 or § 10-2-223.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, §§ 47, 48; 2010, No. 265, § 35; 2010, No. 294, § 35; 2011, No. 207, § 30.

Amendments. The 2009 amendment by No. 1405 rewrote (d)(3); and added (h).

The 2010 amendment by identical acts Nos. 265 and 294, in (f)(3), substituted "A majority" for "Six (6) members" and "constitutes" for "constitute."

The 2011 amendment substituted "Annually by December 15" for "By November 1 of each year" in the introductory language of (e)(1).

23-115-1102. Filing of information with Arkansas Lottery Commission Legislative Oversight Committee.

(a) It is the intent of the General Assembly that the Arkansas Lottery Commission Legislative Oversight Committee perform the monitoring and oversight functions of the Legislative Council for the Arkansas Lottery Commission.

(b) All contracts, rules, reports, or other information required by law to be filed by the commission with the Legislative Council:

(1) Shall not be filed with the Legislative Council; and

(2) Shall be filed with the Arkansas Lottery Commission Legislative Oversight Committee.

(c)(1) The Arkansas Lottery Commission Legislative Oversight Committee shall perform all duties or functions of the Legislative Council required by law concerning the contracts, rules, reports, or other information filed with the Arkansas Lottery Commission Legislative Oversight Committee under subsection (b) of this section.

(2) The Bureau of Legislative Research shall provide staff for the Arkansas Lottery Commission Legislative Oversight Committee.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 36; 2010, No. 294, § 36.

Amendments. The 2010 amendment by identical acts Nos. 265 and 294 added (c)(2).

Index to Title 23 (88-115)

A

ACCIDENTS.
Amusements.
Records and statistics, §23-89-516.
Reporting, §23-89-510.

ACCOUNTINGS BY FIDUCIARIES.
Legal insurance.
Separate accounts, §23-91-213.

ACTIONS.
Choice of health care providers by patients.
Enforcement of provisions by providers, §23-99-207.
Continuing care providers.
Enforcement of chapter, §23-93-104.
Lottery commission.
Removal of members, proceedings on, §23-115-210.
Recreational vehicle franchises.
Recovery of damages, §23-112-1022.
Underinsured motorists, §23-89-209.

ADMISSION TAX.
Greyhound racing, §23-111-510.
Horse racing, §23-110-411.

ADVERTISING.
Continuing care providers.
Untrue, deceptive or misleading statements.
Prohibited, §23-93-110.
Insurance.
Life and health insurance guaranty association act.
Advertisement of act in insurance sales.
Prohibited, §23-96-105.
Property and casualty insurance guaranty.
Prohibited advertisements or statements, §23-90-121.

AFFIDAVITS.
Greyhound racing.
Residence of officers and directors of franchise holders, §23-111-406.
Penalty for false affidavit, §23-111-406.

AFFIDAVITS —Cont'd
Professional employer organizations.
Employer service assurance organization affidavit, §23-92-414.
Filing, §23-92-418.

AGENTS.
Legal insurance.
Licenses, §23-91-219.
Management and exclusive agency contracts, §23-91-214.
Title insurance.
Generally, §§23-103-401 to 23-103-417.

AMBULATORY SURGICAL CENTERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

AMUSEMENTS.
Accidents.
Records and statistics, §23-89-516.
Reporting, §23-89-510.
Amusement ride and amusement attraction safety insurance.
Accidents.
Records and statistics, §23-89-516.
Reporting, §23-89-510.
Bungee jumping.
Prohibited bungee operations, §23-89-512.
Cancellation of coverage.
Notice, §23-89-507.
Orders, §23-89-507.
Cease and desist orders.
Notice required, §23-89-509.
Operation without safety inspection and insurance, §23-89-504.
Unsafe conditions, §23-89-507.
Citation of subchapter, §23-89-501.
Definitions, §23-89-502.
Disposition of funds received under provisions, §23-89-517.
Emergency inspections, §23-89-506.

AMUSEMENTS —Cont'd
Amusement ride and amusement attraction safety insurance —Cont'd
Exemptions from provisions, §23-89-503.
Fees.
Action for delinquent fees, §23-89-504.
Disposition of funds received under provisions, §23-89-517.
Inspectors, §23-89-504.
Minimum amount, §23-89-505.
Misdemeanors.
Operation without safety inspection and insurance, §23-89-504.
Nondestructive testing.
Compliance with manufacturer standards, §23-89-515.
Defined, §23-89-502.
Operation without safety inspection and insurance unlawful, §23-89-504.
Orders.
Cancellation or suspension of permits.
Transmission to Arkansas state police, §23-89-509.
Penalties.
Operation without safety inspection and insurance, §23-89-504.
Permits.
Required, §23-89-505.
Portable attractions.
Safety inspections, §23-89-506.
Proof of coverage, §23-89-505.
Ride operators, §23-89-511.
Rider safety.
Duties of patrons, §23-89-514.
Posting notices, §23-89-513.
Rules and regulations.
Promulgation, §23-89-508.
Safety inspections.
Director, §23-89-506.
Emergency inspections, §23-89-506.
Fee, §23-89-505.
Determination of fee amounts, §23-89-506.
Frequency, §23-89-506.
Insurance company, §23-89-507.
Portable attractions, §23-89-506.
Required, §§23-89-504, 23-89-505.
Title of subchapter, §23-89-501.
Unsafe conditions.
Cease and desist orders, §23-89-507.
Notice, §23-89-507.
Amusement ride safety advisory board, §23-89-518.

AMUSEMENTS —Cont'd
Bungee jumping.
Prohibited bungee operations, §23-89-512.
Inspections.
Amusement rides.
Insurance inspections, §§23-89-504 to 23-89-507.
Insurance.
Amusement ride and amusement attraction safety insurance, §§23-89-501 to 23-89-518.
Intoxication.
Ride operators, §23-89-511.
Nondestructive testing.
Compliance with manufacturer standards, §23-89-515.
Defined, §23-89-502.
Operators of rides.
Qualifications, §23-89-511.
Standard of care, §23-89-511.
Records, §23-89-516.
Ride operators.
Qualifications, §23-89-511.
Standard of care, §23-89-511.
Rider safety.
Duties of patrons, §23-89-514.
Posting notice, §23-89-513.

ANY WILLING PROVIDER LAWS.
Choice of health care providers by patients generally, §§23-99-201 to 23-99-209.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.

APPEALS.
Arkansas earthquake authority.
Rulings or decisions of board, §23-102-115.
Greyhound racing.
Franchises to conduct races.
Refusal to grant temporary franchise, §23-111-302.
Horse racing.
Findings and orders of racing commission, §23-110-205.
Franchises to conduct horse races.
Refusal to grant, §23-110-302.
Insurance.
Property and casualty insurance guaranty.
Rulings of commissioner, §23-90-123.
Rural risk underwriting association.
Applicants for policy, persons insured under plan and others affected by plan may appeal to commissioner, §23-88-309.

APPEALS —Cont'd
Lotteries.
Administrative orders of commission, §23-115-209.
Claims presented to commission, §23-115-208.
Closure of retailer's business by commission, §23-115-609.
Removal of commission member, §23-115-210.

ARKANSAS EARTHQUAKE AUTHORITY ACT, §§23-102-101 to 23-102-119.

ARKANSAS RURAL RISK UNDERWRITING ASSOCIATION.
General provisions, §§23-88-301 to 23-88-309.

ARKANSAS SCHOLARSHIP LOTTERY ACT, §§23-115-101 to 23-115-1102.

ARSON.
Insurance.
Anti-arson applications, §§23-88-201 to 23-88-210.
Alternative application, §23-88-209.
Applicability of provisions, §23-88-203.
Assignment of policy or contract.
When completion of anti-arson application required, §23-88-203.
Change in information.
Notification, §23-88-208.
Defined, §23-88-202.
Forms.
Promulgation by insurance commissioner, §23-88-205.
Mandatory use, §23-88-206.
Penalties.
Violations of subchapter, §23-88-204.
Purpose of subchapter, §23-88-201.
Required to enter into insurance contract, §23-88-207.
Termination of contracts, §23-88-210.

ASSESSMENTS.
Charitable bingo and raffle tickets.
Excise taxes, §23-114-606.
Insurance.
Life and health insurance guaranty association.
Assessment of member insurers, §23-96-115.

ASSESSMENTS —Cont'd
Insurance —Cont'd
Property and casualty insurance guaranty.
Accounting for and repayment of assessments, §23-90-114.
Claims, §23-90-112.
Taxation.
Credit against taxes, §23-90-119.
Rural risk underwriting association.
Governing board empowered to make, §23-88-306.

ASSETS.
Legal insurance.
Investment of assets, §23-91-217.

ASSIGNMENTS.
Insurance.
Life and health insurance guaranty association.
Assignment rights, §23-96-114.

ASSOCIATIONS.
Arkansas rural risk underwriting association, §§23-88-301 to 23-88-309.
Insurance.
Life and health insurance guaranty association.
General provisions, §§23-96-101 to 23-96-121.
Rural risk underwriting association, §§23-88-301 to 23-88-309.
Life and health insurance guaranty association.
General provisions, §§23-96-101 to 23-96-121.
Rural risk underwriting association, §§23-88-301, 23-88-309.

ATHLETIC TRAINERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

ATTACHMENT.
Lotteries.
Withholding from prizes, §23-115-403.

ATTORNEYS AT LAW.
Definitions.
Legal insurance, §23-91-203.
Ethics.
Legal insurance, §23-91-221.
Insurance.
Legal insurance, §§23-91-201 to 23-91-227.

ATTORNEYS AT LAW —Cont'd
Legal insurance.
Accounts and accounting.
Separate accounts, §23-91-213.
Agents.
Licenses, §23-91-219.
Management and exclusive agency contracts, §23-91-214.
Annual report, §23-91-215.
Applicability of general insurance law.
To all legal insurers, hearings and appeals, §23-91-204.
To insurance companies, §23-91-204.
Trade practices, §23-91-218.
Assets.
Investments, §23-91-217.
Certificates of authority.
Applications, §23-91-208.
Public documents, §23-91-227.
Conditions for issuing, §23-91-209.
Issuance, §23-91-209.
Required, §23-91-208.
Suspension, revocation or refusal to renew, §23-91-222.
Citation of subchapter, §23-91-201.
Contracts.
Management and exclusive agency contracts, §23-91-214.
Definitions, §23-91-203.
Ethics, §23-91-221.
Examinations.
Grounds, §23-91-220.
Exemptions, §23-91-206.
Legal referral services program.
Requirements prior to administering, §23-91-206.
Fees.
Payment to commissioner, §23-91-225.
General insurance law.
Applicability to all legal insurers, hearings and appeals, §23-91-204.
Applicability to insurance companies, §23-91-204.
Hearings.
Applicability of general insurance law, §23-91-204.
Investments.
Assets, §23-91-217.
Legal referral services program.
Requirements of persons exempt from provisions of subchapter prior to administering, §23-91-206.
Legislative declaration, §23-91-202.
Licenses.
Agents, §23-91-219.

ATTORNEYS AT LAW —Cont'd
Legal insurance —Cont'd
Liquidation, §23-91-223.
Management and exclusive agency contracts, §23-91-214.
Penalties.
Generally, §23-91-207.
Policies.
Forms.
Approval, §23-91-212.
Regulation, §23-91-210.
Premiums.
Taxation, §23-91-226.
Professional ethics, §23-91-221.
Public documents, §23-91-227.
Purposes, §23-91-202.
Rates.
Approval, §23-91-212.
Regulation, §23-91-211.
Regulation of policy forms, §23-91-210.
Regulation of rates, §23-91-211.
Rehabilitation, §23-91-223.
Reports.
Annual report, §23-91-215.
Exempt persons, §23-91-206.
Public documents, §23-91-227.
Reserves.
Maintenance, §23-91-216.
Revocation of certificate of authority, §23-91-222.
Rules and regulations.
Authority to promulgate, §23-91-224.
Separate accounts, §23-91-213.
Service of process, §23-91-208.
Short title, §23-91-201.
Suspension of certificate of authority, §23-91-222.
Taxation, §23-91-226.
Trade practices, §23-91-218.
Unauthorized insurance, §23-91-205.
Violations.
Penalty provisions, §23-91-207.
Unauthorized insurance, §23-91-205.
Licenses.
Legal insurance.
Agents, §23-91-219.
Multiple employer trust and self-insured plans.
Bonds, surety.
Required.
Exception, §23-92-204.
Prepaid legal insurance, §§23-91-201 to 23-91-227.
Professional ethics.
Legal insurance, §23-91-221.
Reports.
Legal insurance, §§23-91-215, 23-91-227.
Exempt persons, §23-91-206.

ATTORNEYS' FEES.
Choice of health care providers by patients.
Enforcement of provisions by providers, §23-99-207.
Recreational vehicle franchises.
Actions to recover damages, §23-112-1022.

AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

AUDITS AND AUDITORS.
Lotteries.
Oversight of commission, §23-115-206.
Presence of auditor to determine accuracy of results and winner, §23-115-403.
Title insurance.
Audit of insurer, §23-103-411.

AUTISM.
Health insurance.
Autism spectrum disorders.
Required coverage, §23-99-418.

B

BANKRUPTCY AND INSOLVENCY.
Continuing care providers.
Resident's statutory lien on real and personal property, §23-93-113.
Lotteries.
Retailers, fiduciary duties upon insolvency, §23-115-605.

BINGO.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

BLACK BOXES.
Motor vehicle event data recorders, §23-112-107.

BOARDS AND COMMISSIONS.
Amusement ride safety advisory board, §23-89-518.
Lotteries.
Arkansas lottery commission, §§23-115-201 to 23-115-212.

BOARDS AND COMMISSIONS —Cont'd
Lotteries —Cont'd
Lottery retailer advisory board, §23-115-204.

BONDS, SURETY.
Greyhound racing.
Franchise holders, §23-111-514.
Horse racing.
Franchise holders, §23-110-414.
Racing commission.
Secretary, §23-110-202.
Lotteries.
Employees of commission, §23-115-303.
Retailers, §23-115-603.
Vendors, §23-115-502.
Motor vehicle dealers.
Application for license accompanied by, §23-112-103.
Professional employer organizations, §23-92-408.
Employer service assurance organizations, §23-92-415.
Recreational vehicle franchises.
License requirement, §23-112-1005.

BREAST CANCER.
Mammography.
Insurance.
Coverage.
Required coverage, §23-99-405.
Mastectomies.
Required coverage, §23-99-405.

BUNGEE JUMPING.
Insurance for amusements, §§23-89-501 to 23-89-518.

BURDEN OF PROOF.
Lottery commission.
Removal of members, proceedings on, §23-115-210.

C

CAMERAS AND CAMCORDERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CAMPAIGN FINANCE.
Lottery vendors.
Political contributions prohibited, §23-115-504.

CD PLAYERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CEASE AND DESIST ORDERS.
Amusement ride and amusement attraction safety insurance, §§23-89-504, 23-89-507, 23-89-509.

CEASE AND DESIST ORDERS —Cont'd
Continuing care providers.
Enforcement of chapter, §23-93-104.

CELL PHONES.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CHARITABLE BINGO AND RAFFLES ENABLING ACT, §§23-114-101 to 23-114-706.
Administration, §§23-114-201 to 23-114-203.
Approval and printing of bingo faces and raffle tickets, §23-114-202.
Director to administer chapter, §23-114-201.
Rulemaking authority, §23-114-203.
Authorized organizations.
Address of primary business office and address where records maintained.
Organizations to provide to director, §23-114-405.
Bingo and raffle accounts, §§23-114-501 to 23-114-507.
Compensation of employees, §23-114-103.
Operation of games of bingo and raffles.
Prohibition on compensation, §23-114-403.
Fines.
Violation of provisions, §23-114-104.
Licenses, §§23-114-301 to 23-114-307.
Revocation, §23-114-701.
Bingo and raffle accounts, §§23-114-501 to 23-114-507.
Authorized users, §23-114-503.
Deposits, §23-114-501.
Disbursements to charitable purpose, §§23-114-503, 23-114-504.
Establishment and maintenance, §23-114-501.
Expenses.
Allowable expenses, §23-114-506.
Payment from bingo and raffle account, §23-114-507.
Gross receipts not to be commingled with other funds, §23-114-501.
Net proceeds.
Prohibited uses, §23-114-505.
Use for charitable purpose, §23-114-504.
Withdrawals, §23-114-502.
Bingo faces.
Approval, §23-114-202.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Bingo faces —Cont'd
Excise taxes, §§23-114-601 to 23-114-606.
Printing, §23-114-202.
Candidates for public office.
Net proceeds not to be used to support or oppose, §23-114-505.
Citation of act, §23-114-101.
Compensation.
Authorized organizations.
Compensation of employees, §23-114-103.
Operation of games of bingo and raffles.
Prohibition on compensation, §23-114-403.
Complaint of violation, §23-114-706.
Conduct of raffles, §23-114-401.
Definitions, §23-114-102.
Director of department of finance and administration.
Address of authorized organization's primary business office and address where records maintained.
Organizations to provide to director, §23-114-405.
Administration of provisions, §23-114-201.
Approval of bingo faces and raffle tickets, §23-114-202.
Rulemaking authority, §23-114-203.
Supervision of games of bingo and raffles, §23-114-201.
Discrimination prohibited, §23-114-404.
Distributors and manufacturers.
Excise taxes, §§23-114-601 to 23-114-606.
Licenses.
Applications, §23-114-304.
Fees, §23-114-307.
Deposit of revenue collected, §23-114-605.
Revocation of licenses, §23-114-702.
Purchase of bingo equipment from, §23-114-409.
Door prizes, §23-114-408.
Electronic devices or machines.
Games of bingo or raffles prohibited on, §23-114-103.
Enforcement, §§23-114-701 to 23-114-706.
Complaints, §23-114-706.
Injunctions, §23-114-704.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Enforcement —Cont'd
Inspection of premises, §23-114-703.
Records.
Examination and inspection, §23-114-705.
Revocation of licenses.
Authorized organizations, §23-114-701.
Distributors and manufacturers, §23-114-702.
Excise taxes, §§23-114-601 to 23-114-606.
Assessments on nonfilers, §23-114-606.
Deposit of revenue collected, §23-114-605.
Levy, §23-114-601.
Payment, §23-114-602.
Records.
Excise tax reporting, §23-114-603.
Reporting, §23-114-602.
Information to be reported, §23-114-603.
Expenses.
Allowable expenses, §23-114-506.
Payment from bingo and raffle account, §23-114-507.
Fees.
Deposit of revenue collected, §23-114-605.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-307.
Fines.
Violation of provisions, §23-114-104.
Gift certificates, §23-114-406.
Injunctions, §23-114-704.
Legislation, influencing or attempting to influence.
Net proceeds not to be used for, §23-114-505.
Licenses, §§23-114-301 to 23-114-307.
Applications.
Authorized organizations, §23-114-303.
Distributors and manufacturers, §23-114-304.
Authorized organizations, §23-114-301.
Applications, §23-114-303.
Display of licenses, §23-114-306.
Fees, §23-114-302.
Deposit of revenue collected, §23-114-605.
Revocation, §23-114-701.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Licenses —Cont'd
Denial, suspension, or revocation, §23-114-305.
Display of licenses, §23-114-306.
Distributors and manufacturers.
Applications, §23-114-304.
Fees, §23-114-307.
Deposit of revenue collected, §23-114-605.
Revocation of licenses, §23-114-702.
Renewal, §23-114-303.
Revocation.
Authorized organizations, §23-114-701.
Distributors and manufacturers, §23-114-702.
Temporary licenses, §23-114-302.
Lotteries.
Games not prohibited as, §23-114-103.
Measures submitted to vote of the people.
Net proceeds not to be used to support or oppose, §23-114-505.
Minors.
Prohibited from playing game of bingo or purchasing raffle tickets, §23-114-404.
Operation of games of bingo and raffles, §§23-114-401 to 23-114-409.
Bingo sessions, §23-114-407.
Prizes, §23-114-408.
Compensation prohibited, §23-114-403.
Conduct of raffles, §23-114-401.
Discrimination prohibited, §23-114-404.
Gift certificates, §23-114-406.
Premises, §23-114-401.
Inspection of premises, §23-114-703.
Leasing or making available premises, §23-114-402.
Prizes, §23-114-408.
Purchase of bingo equipment, §23-114-409.
Records, §23-114-405.
Premises.
Conduct of bingo games, §23-114-401.
Inspection, §23-114-703.
Leasing or making available premises, §23-114-402.
Prizes, §23-114-408.
Purchase of bingo equipment, §23-114-409.
Raffle tickets.
Approval, §23-114-202.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Raffle tickets —Cont'd
Minors prohibited from purchasing, §23-114-404.
Printing, §23-114-202.
Records, §23-114-405.
Examination and inspection, §23-114-705.
Excise taxes.
Maintenance of records to substantiate report, §23-114-603.
Gift certificates, §23-114-406.
Rulemaking authority, §23-114-203.
Taxation.
Excise taxes, §§23-114-601 to 23-114-606.
Temporary licenses, §23-114-302.
Title of act, §23-114-101.
Venue.
Injunctions, §23-114-704.
Violation of provisions.
Complaints, §23-114-706.
Fines, §23-114-104.
Injunctions, §23-114-704.
Revocation of licenses.
Authorized organizations, §23-114-701.
Distributors and manufacturers, §23-114-702.

CHARITABLE ORGANIZATIONS.
Bingo and raffles.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.
Raffles and bingo.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

CHILDREN AND MINORS.
Bingo.
Charitable bingo and raffles.
Children prohibited from playing bingo or buying raffle tickets, §23-114-404.
Charitable bingo and raffles.
Children prohibited from playing bingo or buying raffle tickets, §23-114-404.
Greyhound racing.
Employment by franchise holders.
Prohibited, §23-111-308.
Patrons at race tracks.
Prohibited, §23-111-308.
Wagering.
Prohibited, §23-111-508.

CHILDREN AND MINORS —Cont'd
Horse racing.
Wagering.
Prohibited for persons under 18, §23-110-405.
Insurance.
Coverage of newborn infants included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
Policies.
Coverage of newborn infants included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
Lotteries.
Penalties for violations, §23-115-901.
Prohibition on purchase of tickets by minors, §23-115-402.
Retailers allowing minors to purchase tickets, §23-115-207.
Raffles.
Charitable bingo and raffles.
Children prohibited from playing bingo or buying raffle tickets, §23-114-404.

CHIROPRACTORS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

CHOICE OF HEALTH CARE PROVIDERS BY PATIENTS, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Actions.
Enforcement of provisions by providers, §23-99-207.
Applicability of provisions, §23-99-209.
Enforcement of any willing provider laws.
Applicability of any willing provider laws, §23-99-801.
Attorneys' fees.
Enforcement of provisions by providers, §23-99-207.
Definitions, §23-99-203.
Enforcement of any willing provider laws, §23-99-802.

CHOICE OF HEALTH CARE PROVIDERS BY PATIENTS —Cont'd
Discriminatory terms in health benefit plans, §23-99-204.
Effective date, §23-99-208.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.
Applicability of any willing provider laws, §23-99-801.
Definitions, §23-99-802.
Injunctions, §23-99-803.
Insurance commissioner, §23-99-803.
Statutory construction, §23-99-801.
ERISA.
Effect on applicability of provisions, §23-99-209.
Enforcement of any willing provider laws.
Applicability of any willing provider laws, §23-99-801.
Health benefit plans.
Conformity with provisions, §23-99-206.
Void provisions, §23-99-208.
Health care benefits.
Excluding provider from providing, §23-99-205.
Requiring insurer to provide, §23-99-205.
Injunctions.
Enforcement of any willing provider laws, §23-99-803.
Enforcement of provisions by providers, §23-99-207.
Legislative intent, §23-99-202.
Monetary advantages or penalties.
Discriminatory terms in health benefit plans, §23-99-204.
Patient protection act.
Short title, §23-99-201.
Purpose of provisions, §23-99-202.
Statutory construction, §23-99-205.
Enforcement of any willing provider laws, §23-99-801.
Void provisions, §23-99-208.

CIRCUIT COURTS.
Lotteries.
Closure of retail business by commission.
Judicial relief, §23-115-609.
Removal of commission members, proceedings on, §23-115-210.

CLAIMS AGAINST THE STATE.
Lottery commission, claims against, §23-115-208.

COERCION.
Recreational vehicles franchises.
Coercion of dealer.
Prohibited acts, §23-112-1018.

COLLATERAL.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

COMMUNITY COLLEGES.
Greyhound racing revenue.
Use of revenue derived from additional racing days, §23-111-515.

COMMUNITY MENTAL HEALTH CLINICS AND CENTERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

COMPUTERS AND SOFTWARE.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CONFIDENTIALITY OF INFORMATION.
Greyhound racing.
Criminal background checks.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Horse racing.
Criminal background checks.
Horse owners, trainers, jockeys, etc., §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Lotteries, §23-115-404.
Agreements with United States government and enforcement or regulatory agencies, §23-115-405.
Withholding from prizes.
Debtors owing money to state.
Confidential information provided to claimant agency, §23-115-1005.
Motor vehicles.
Event data recorders, §23-112-107.
Professional employer organizations, §23-92-413.
Property insurance.
Fire loss reporting act, §23-88-403.

CONFLICT OF LAWS.
Greyhound racing.
Wagering on electronic games of skill, §23-113-602.
Horse racing.
Statutes prohibiting betting on racing inapplicable, §23-110-102.
Wagering on electronic games of skill, §23-113-602.
Lotteries.
Enforcement provisions, §23-115-904.

CONFLICTS OF INTEREST.
Greyhound racing.
Racing commission.
Persons prohibited from membership, §23-111-202.
Horse racing.
Racing commission.
Persons prohibited from membership, §23-110-201.
Insurance.
Property and casualty insurance guaranty.
Advisory association.
Members may enter into contracts, §23-90-110.
Lottery commission, §23-115-203.
Employees of commission, §23-115-303.
Gifts from or other interests in retailers, §23-115-601.
Gifts from or other interests in vendors, §23-115-501.

CONSUMER PROTECTION.
Health insurance, §§23-99-401 to 23-99-420.
Insurance.
Health insurance, §§23-99-401 to 23-99-420.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CONTINUING CARE PROVIDERS.
Accounts and accounting.
Interest-bearing escrow account.
Provider required to establish, §23-93-112.
Actions.
Enforcement of chapter, §23-93-104.
Advertising.
Untrue, deceptive or misleading statements.
Prohibited, §23-93-110.
Applicability of chapter, §23-93-102.
Bankruptcy and insolvency.
Resident's statutory lien on real and personal property, §23-93-113.
Citation of chapter, §23-93-101.

CONTINUING CARE PROVIDERS —Cont'd
Contracts.
Contents.
Minimum content requirements, §23-93-108.
Licenses, §23-93-203.
Refunds.
Rescission of contractual obligation, §23-93-109.
Requirements, §23-93-108.
Rescission, §23-93-109.
Written in clear and understandable language.
Required, §23-93-108.
Definitions, §23-93-103.
Licenses, §23-93-201.
Disclosure statements.
Annual disclosure statements.
Contents, §23-93-106.
Required, §23-93-106.
Deficiencies.
Notice, §23-93-107.
Initial disclosure statements, §23-93-106.
Contents, §23-93-106.
Required, §23-93-106.
Inspections, §23-93-107.
Notice.
Deficiencies, §23-93-107.
Review, §23-93-107.
Enforcement of chapter, §23-93-104.
Escrow.
Interest-bearing escrow account.
Requirements, §23-93-112.
Examinations.
Insolvent facilities.
Financial examinations conducted, §23-93-114.
Financial statements.
Inaccurately stating true financial condition.
Prohibited, §23-93-110.
Injunctions.
Enforcement of chapter, §23-93-104.
Intention of general assembly, §23-93-102.
Investigations.
Grounds for investigation, §23-93-114.
Powers of commissioner, §23-93-114.
Licenses, §§23-93-201 to 23-93-207.
Agency action on application.
Time period, §23-93-206.
Applicability of act, §23-93-202.
Application.
Contents, §23-93-207.
Denial, §23-93-206.

CONTINUING CARE PROVIDERS —Cont'd
Licenses —Cont'd
Application —Cont'd
Documents and information required, §23-93-207.
Fees, §23-93-206.
Time period for agency action, §23-93-206.
Criteria for issuance, §23-93-204.
Definitions, §23-93-201.
Disciplinary actions, §23-93-205.
Fees.
Application fee, §23-93-206.
Entrance fee.
Defined, §23-93-201.
Issuance, §23-93-204.
Management of facility.
Limitation on third-party provider contracts, §23-93-203.
Reconsideration of application, §23-93-206.
Scope of act, §23-93-202.
Transferability, §23-93-203.
Violations, §23-93-205.
Liens.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Liquid refund reserves, §23-93-111.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.
Mandamus.
Enforcement of chapter, §23-93-104.
Notice.
Disclosure statements.
Deficiencies, §23-93-107.
Licenses.
Disciplinary actions, §23-93-205.
Orders.
Cease and desist orders.
Enforcement of chapter, §23-93-104.
Receivers.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Refunds.
Liquid refund reserves.
Establishing and maintaining.
Required, §23-93-111.
Information relating to amount and method used to maintain furnished upon request, §23-93-111.

CONTINUING CARE PROVIDERS —Cont'd
Refunds —Cont'd
Liquid refund reserves —Cont'd
Satisfaction of reserve requirement, §23-93-111.
Rescission of contractual obligation, §23-93-109.
Rescission of contract, §23-93-109.
Rules and regulations, §23-93-105.
Title of chapter, §23-93-101.

CONTRACTS.
Continuing care providers.
Contents.
Minimum content requirements, §23-93-108.
Licenses, §23-93-203.
Refunds.
Rescission of contractual obligation, §23-93-109.
Requirements, §23-93-108.
Rescission, §23-93-109.
Written in clear and understandable language.
Required, §23-93-108.
Legal insurance.
Management and exclusive agency contracts, §23-91-214.
Lotteries.
Audit of commission, §23-115-206.
Participation by female-owned and minority-owned businesses, §23-115-401.
Procurement contracts generally, §23-115-501.
Vendors, §§23-115-501 to 23-115-504.
Title insurance.
Agency contracts, §23-103-407.

COSTS.
Recreational vehicle franchises.
Actions to recover damages, §23-112-1022.

COUNSELORS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

COUNTIES.
Lotteries.
Local government authority preempted, §23-115-406.

CREDITOR-PLACED INSURANCE, §§23-101-101 to 23-101-114.
Actual cash value.
Defined, §23-101-103.
ACV.
Defined, §23-101-103.
Applicability of provisions, §23-101-102.
Blanket insurance.
Defined, §23-101-103.
Certificates.
Approval of forms, §23-101-108.
Evidence of coverage, §23-101-107.
Claims.
Amount paid, §23-101-110.
Collateral.
Defined, §23-101-103.
Security interest in collateral, §23-101-111.
Credit agreements.
Defined, §23-101-103.
Creditors.
Defined, §23-101-103.
Rights and duties of parties, §23-101-111.
Credit transactions.
Defined, §23-101-103.
Dates of insurance, §23-101-105.
Debtors.
Defined, §23-101-103.
Disclosures to debtor, §23-101-113.
Rights and duties of parties, §23-101-111.
Definitions, §23-101-103.
Disclosures to debtor, §23-101-113.
Evidence of coverage, §23-101-107.
Insurance tracking.
Defined, §23-101-103.
Insurers.
Defined, §23-101-103.
Lapse.
Defined, §23-101-103.
Legislative intent, §23-101-101.
Limited dual interest insurance.
Defined, §23-101-103.
Loss ratio.
Defined, §23-101-103.
Net debt.
Defined, §23-101-103.
Policies.
Approval of forms, §23-101-108.
Evidence of coverage, §23-101-107.
Premiums.
Calculation, §23-101-106.
Payment, §23-101-106.
Insurers' requirements, §23-101-112.
Rates, §23-101-108.

CREDITOR-PLACED INSURANCE —Cont'd
Premiums —Cont'd
Refund of unearned premiums, §23-101-109.
Producers.
Defined, §23-101-103.
Prohibited coverages, §23-101-104.
Purpose of provisions, §23-101-101.
Rulemaking to implement provisions, §23-101-114.
Scope of provisions, §23-101-102.
Single interest insurance.
Claims.
Amount paid, §23-101-110.
Defined, §23-101-103.
Unearned premiums.
Refund of unearned premiums, §23-101-109.

CRIMINAL HISTORY RECORD CHECKS.
Charitable bingo and raffles.
Authorized organizations.
License applicants, §23-114-303.
Greyhound racing.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Horse racing.
Owners, trainers, jockeys, and jockey agents, §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Lotteries.
Commission employees, §23-115-303.
Commission members, §23-115-203.
Retailers, §23-115-601.
Vendors, §23-115-501.
Professional employer organizations.
Controlling persons, §23-92-405.

CRIMINAL LAW AND PROCEDURE.
Amusement rides and attractions, §23-89-504.
Amusements.
Safety of patrons, §23-89-514.
Charitable bingo and raffles enabling act.
Violation of provisions, §23-114-104.
Dog racing.
Compliance with franchise, §23-111-501.
Failure to appear or testify at hearings, §23-111-205.
Failure to pay tax, §23-111-513.

CRIMINAL LAW AND PROCEDURE —Cont'd
Dog racing —Cont'd
False affidavits of officers and directors, §23-111-406.
Improper wagering, §23-111-508.
Issuance of sales tax-free passes, §23-111-510.
Greyhound racing.
Wagering on electronic games of skill.
False statements on employer or supplier license applications, §23-113-303.
Horse racing.
Compliance with license, §23-110-410.
Failure to appear or testify at hearings, §23-110-205.
Failure to pay tax, §23-110-415.
False applications for employment, §23-110-308.
Improper wagering, §23-110-405.
Issuance of sales tax-free passes, §23-110-411.
Wagering on electronic games of skill.
False statements on employer or supplier license applications, §23-113-303.
Insurance.
Investigations.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Lotteries.
Fraud, §23-115-902.
Minors purchasing tickets, §23-115-901.
Retailers, false statement on license application, §23-115-903.
Retailers continuing to operate after injunction of business, §23-115-609.
Property insurance.
Willful violations by insurer, §23-88-204.

D

DAMAGES.
Insurance.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Motor vehicles.
Underinsured motorists, §23-89-209.
Punitive damages.
Underinsured motorists.
Tentative settlement agreement, §23-89-209.

DAMAGES —Cont'd
Underinsured motorists, §23-89-209.

DEALERS.
Recreational vehicle dealers, §§23-112-1001 to 23-112-1023.

DEBTOR AND CREDITORS.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Lotteries.
Withholding from prizes of debtors owing money to state, §§23-115-1001 to 23-115-1006.

DEBTS.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

DECEDENTS' ESTATES.
Franchises.
Motor vehicle franchises, §23-112-403.
Lotteries.
Unclaimed proceeds, §23-115-403.
Motor vehicle franchises, §23-112-403.

DEFENSES.
Lotteries.
Closure of retailer's business by commission.
Administrative hearing, §23-115-608.
Retailers selling tickets to minors.
Good faith reliance on proof of age, §23-115-901.

DEFINED TERMS.
Access.
Title insurance, §23-103-417.
Account.
Life and health insurance guarantee association, §23-96-104.
Actual cash value (ACV).
Creditor-placed insurance, §23-101-103.
Acute condition.
Health insurance consumer protection, §23-99-403.
Administrative expenses.
Lotteries, §23-115-103.
Administrative order.
Lotteries, §23-115-103.
Advertisement.
Motor vehicle commission, §23-112-103.
All-terrain vehicle.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Amusement attraction.
Casualty insurance, §23-89-502.
Amusement ride.
Casualty insurance, §23-89-502.
Anti-arson application.
Property insurance, §23-88-202.
Any willing provider law.
Choice of health care providers by patients, enforcement of any willing provider laws, §23-99-802.
Applicant.
Long-term care insurance, §23-97-304.
Area of sales responsibility.
Recreational vehicle franchise act, §23-112-1003.
Arkansas greyhound racing law.
Wagering on electronic games of skill, §23-113-103.
Association.
Life and health insurance guaranty association, §23-96-104.
Long-term care insurance, §23-97-304.
Authorized assessment.
Life and health insurance guaranty association, §23-96-104.
Authorized organization.
Charitable bingo and raffles enabling act, §23-114-102.
Authorized representative.
Motor vehicle event data recorders, §23-112-107.
Auto auction.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Automobile collision coverage.
Casualty insurance, §23-89-301.
Automobile liability coverage.
Casualty insurance, §23-89-301.
Automobile physical damage coverage.
Casualty insurance, §23-89-301.
Benefit plan.
Life and health insurance guaranty association, §23-96-104.
Bingo equipment, §23-114-102.
Bingo face, §23-114-102.
Bingo session, §23-114-102.
Blanket insurance.
Creditor-placed insurance, §23-101-103.
Branch location.
Motor vehicle commission, §23-112-103.
Broker.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Called assessment.
Life and health insurance guaranty association, §23-96-104.
Carve-out arrangement.
Health insurance coverage for mental illness, §23-99-503.
Casino gambling.
Lotteries, §23-115-103.
Certificate.
Long-term care insurance, §23-97-304.
Children's preventive health care services.
Minimum basic benefit policies, §23-98-102.
Claimant agencies.
Lotteries, withholding from prizes, §23-115-1002.
Client.
Professional employer organizations, §23-92-402.
Closing.
Title insurance, §23-103-402.
Closing agent.
Title insurance, §23-103-402.
COBRA.
Insurance.
Minimum basic benefit policies, §23-98-102.
Coemployer.
Professional employer organizations, §23-92-402.
Coemployment relationship.
Professional employer organizations, §23-92-402.
Coerce.
Motor vehicle commission, §23-112-103.
Collateral.
Creditor-placed insurance, §23-101-103.
Compensation.
Lotteries, §23-115-103.
Completed operations liability.
Liability risk retention, §23-94-203.
Construction.
Horse racing, disposition of wagering proceeds, §23-110-407.
Continuing care.
Continuing care provider regulation, §23-93-103.
Contract.
Property insurance, §23-88-203.
Contract for sale.
Motor vehicle dealers, §23-112-316.
Used motor vehicle dealers, §23-112-613.

DEFINED TERMS —Cont'd
Contract owner.
Life and health insurance guaranty association, §23-96-104.
Contractual obligation.
Life and health insurance guarantee association, §23-96-104.
Professional liability insurance, §23-91-203.
Controlling person.
Professional employer organizations, §23-92-402.
Conversion.
Motor vehicle commission, §23-112-103.
Copayment.
Choice of health care providers by patients, §23-99-203.
Covered claim.
Property and casualty insurance guarantee, §23-90-103.
Covered employee.
Professional employer organizations, §23-92-402.
Covered person.
Dental point of service option, §23-99-603.
Health insurance consumer protection, §23-99-403.
Primary eye care provider act, §23-99-302.
Covered policy.
Life and health insurance guarantee association, §23-96-104.
Covered service.
Primary eye care provider act, §23-99-302.
Credit agreement.
Creditor-placed insurance, §23-101-103.
Creditor.
Creditor-placed insurance, §23-101-103.
Creditor-placed insurance, §23-101-103.
Credit transaction.
Creditor-placed insurance, §23-101-103.
Customer.
Portable electronics insurance, §23-88-501.
Dealer.
Recreational vehicle franchise act, §23-112-1003.
Dealer agreement.
Recreational vehicle franchise act, §23-112-1003.

DEFINED TERMS —Cont'd
Debt.
Lotteries, withholding from prizes, §23-115-1002.
Debtor.
Creditor-placed insurance, §23-101-103.
Lotteries, withholding from prizes, §23-115-1002.
Delivery prior to sale.
Motor vehicle dealers, §23-112-316.
Used motor vehicle dealers, §23-112-613.
Dentist.
Dental point of service option, §23-99-603.
Depositor.
Title insurance, §23-103-402.
Depository.
Title insurance, §23-103-402.
Designee.
Used motor vehicle buyer protection, §23-112-602.
Developmental disorders.
Health insurance coverage for mental illness, §23-99-503.
Distributor.
Charitable bingo and raffles enabling act, §23-114-102.
Motor vehicle commission, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
Distributor branch.
Motor vehicle commission, §23-112-103.
Distributor representative.
Motor vehicle commission, §23-112-103.
Domicile.
Liability risk retention, §23-94-203.
Drafter.
Used motor vehicle buyer protection, §23-112-602.
Electronic games of skill.
Horse racing and greyhound racing, §23-113-103.
Employer service assurance organization.
Professional employer organizations, §23-92-402.
Engaging in the business of buying, selling, or exchanging recreational vehicles.
Recreational vehicle franchise act, §23-112-1004.
Enrolled customer.
Portable electronics insurance, §23-88-501.

DEFINED TERMS —Cont'd
Entity.
Health insurance consumer protection, §23-99-403.
Health insurance coverage for mental illness, §23-99-503.
Entrance fee.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
ERISA.
Choice of health care providers by patients, enforcement of any willing provider laws, §23-99-802.
Escrow.
Title insurance, §23-103-402.
Escrow account.
Title insurance, §23-103-402.
Event.
Arkansas earthquake authority act, §23-102-103.
Extra-contractual claims.
Life and health insurance guaranty association, §23-96-104.
Eye and/or vision care benefits.
Primary eye care providers, §23-99-302.
Facilities.
Continuing care providers, §§23-93-103, 23-93-201.
Factory branch.
Motor vehicle commission, §23-112-103.
Factory campaign.
Recreational vehicle franchise act, §23-112-1003.
Factory representative.
Motor vehicle commission, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
Fail-first.
Health insurance consumer protection, §23-99-420.
Family members.
Recreational vehicle franchise act, §23-112-1003.
Feasibility study.
Liability risk retention, §23-94-203.
Federally tax-qualified long term care insurance contract.
Long-term care insurance, §23-97-304.
Female-owned business.
Lotteries, §23-115-103.
Fifth wheel travel trailer.
Recreational vehicle franchise act, §23-112-1003.
Financial requirements.
Health insurance coverage for mental illness, §23-99-503.

DEFINED TERMS —Cont'd
Fiscal impact statement.
Lotteries, §23-115-103.
Folding camping trailer.
Recreational vehicle franchise act, §23-112-1003.
Franchise.
Motor vehicle commission, §23-112-103.
Franchise holder.
Wagering on electronic games of skill, §23-113-103.
Functional limit test.
Health insurance consumer protection, §23-99-417.
Game of bingo, §23-114-102.
Gastric pacemaker.
Health insurance consumer protection, §23-99-419.
Gastroparesis.
Health insurance consumer protection, §23-99-419.
Gatekeeper.
Primary eye care provider act, §23-99-302.
Gatekeeper system.
Choice of health care providers by patients, §23-99-203.
Primary eye care provider act, §23-99-302.
Gift.
Lotteries, §23-115-103.
Good faith.
Motor vehicle commission, §23-112-103.
Gross receipts.
Charitable bingo and raffles enabling act, §23-114-102.
Group long-term care insurance, §23-97-304.
Hazardous financial condition.
Continuing care providers, §23-93-203.
Health benefit plan.
Any willing provider law, enforcement, §23-99-802.
Choice of health care providers by patients, §23-99-203.
Health insurance consumer protection, §§23-99-403, 23-99-420.
Health insurance coverage for mental illness, §23-99-503.
Primary eye care providers, §23-99-302.
Health care insurer.
Any willing provider law, enforcement, §23-99-802.
Choice of health care providers by patients, §23-99-203.

DEFINED TERMS —Cont'd
Health care insurer —Cont'd
Health insurance consumer protection, §§23-99-403, 23-99-420.
Health insurance coverage for mental illness, §23-99-503.
Primary eye care provider act, §23-99-302.
Health care provider.
Any willing provider law, enforcement, §23-99-802.
Choice of health care providers by patients, §23-99-203.
Health insurance consumer protection, §23-99-420.
Health care services.
Choice of health care providers by patients, §23-99-203.
Dental point of service option, §23-99-603.
Grievance and quality assessment and improvement systems, §23-99-702.
Health insurance consumer protection, §23-99-420.
Health carrier.
Dental point of service option, §23-99-603.
Grievance and quality assessment and improvement systems, §23-99-702.
Health insurer.
Any willing provider law, enforcement, §23-99-802.
Health plan.
Dental point of service option, §23-99-603.
Immediate family.
Lotteries, §23-115-103.
Impaired insurer.
Life and health insurance guarantee association, §23-96-104.
Incompetence.
Lotteries, §23-115-103.
Indemnity agreement.
Title insurance, §23-103-402.
Insolvent insurer.
Life and health insurance guaranty association, §23-96-104.
Property and casualty insurance guaranty, §23-90-103.
Insurance.
Liability risk retention, §23-94-203.
Insurance policy.
Property insurance, §23-88-203.
Insurance tracking.
Creditor-placed insurance, §23-101-103.
Insured.
Minimum basic benefit policies, §23-98-102.

DEFINED TERMS —Cont'd
Insurer.
Arkansas earthquake authority act, §23-102-103.
Creditor-placed insurance, §23-101-103.
Health insurance consumer protection, §23-99-403.
Minimum basic benefit policies, §23-98-102.
Professional liability insurance, §23-91-203.
Property and casualty insurance guaranty, §23-90-103.
Rural risk underwriting, §23-88-302.
Intoxicated.
Amusement ride operators, §23-89-511.
Lapse.
Creditor-placed insurance, §23-101-103.
Legal insurance.
Professional liability insurance, §23-91-203.
Liability.
Liability risk retention, §23-94-203.
License.
Lotteries, §23-115-103.
Licensed authorized organization.
Charitable bingo and raffles enabling act, §23-114-102.
Licensed insurer.
Insurance antifraud assessment, §23-100-104.
Licensed location.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Licensee.
Professional employer organizations, §23-92-402.
Life care.
Continuing care providers, §23-93-201.
Limited dual interest insurance.
Creditor-placed insurance, §23-101-103.
Line-make.
Recreational vehicle franchise act, §23-112-1003.
Line make of a motor home.
Motor vehicle commission, §23-112-103.
Line make of a motor vehicle.
Motor vehicle commission, §23-112-103.
Living unit.
Continuing care providers, §§23-93-103, 23-93-201.

DEFINED TERMS —Cont'd
Lobbying.
Lotteries, §23-115-103.
Local government.
Lotteries, §23-115-103.
Location.
Portable electronics insurance, §23-88-501.
Long-term care insurance, §23-97-304.
Loss ratio.
Creditor-placed insurance, §23-101-103.
Insurance.
Minimum basic benefit policies, §23-98-102.
Lottery, §23-115-103.
Lottery proceeds, §23-115-103.
Low speed vehicle.
Motor vehicle commission, §23-112-103.
Major procurement contract.
Lotteries, §23-115-103.
Managed care plan.
Grievance and quality assessment and improvement systems, §23-99-702.
Health insurance consumer protection, §23-99-403.
Manufacturer.
Charitable bingo and raffles enabling act, §23-114-102.
Motor vehicle commission, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
MAP.
Arkansas earthquake authority act, §23-102-103.
Medicaid.
Health insurance consumer protection, §23-99-420.
Medical necessity.
Health insurance coverage for mental illness, §23-99-507.
Member insurer.
Life and health insurance guarantee association, §23-96-104.
Member of a minority.
Lotteries, §23-115-103.
Mental illness.
Health insurance coverage for mental illness, §23-99-503.
Minimum basic benefit policy.
Insurance, §23-98-102.
Minority-owned business.
Lotteries, §23-115-103.

DEFINED TERMS —Cont'd
Moody's corporate bond yield average.
Life and health insurance guarantee association, §23-96-104.
Motorcycle owners' organization.
Special motorcycle events, §23-112-802.
Motor home.
Recreational vehicle franchise act, §23-112-1003.
Motor vehicle.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Motor vehicle commission, §23-112-103.
Motor vehicle dealer.
Motor vehicle commission, §23-112-103.
Motor vehicle event data recorders, §23-112-107.
Motor vehicle lessor.
Motor vehicle commission, §23-112-103.
Motor vehicle salesperson.
Motor vehicle commission, §23-112-103.
Multidraw screen-based lottery game, §23-115-103.
Multistate or multisovereign lottery.
Lotteries, §23-115-103.
Net debt.
Creditor-placed insurance, §23-101-103.
Net direct written premiums.
Arkansas earthquake authority act, §23-102-103.
Property and casualty insurance guarantee, §23-90-103.
Rural risk underwriting, §23-88-302.
Net proceeds.
Lotteries, §23-115-103.
Net wagering revenues from electronic games of skills.
Horse racing and greyhound racing, §23-113-103.
Network.
Grievance and quality assessment and improvement systems, §23-99-702.
New motor vehicle.
Motor vehicle commission, §23-112-103.
Nondestructive testing.
Amusement ride and amusement attraction safety insurance, §23-89-502.

DEFINED TERMS —Cont'd
Noninsurer.
Any willing provider law, enforcement, §23-99-802.
Nonlottery state educational resources.
Lotteries, §23-115-103.
Nonpayment of premium.
Casualty insurance, §23-89-301.
Nonprofit entity.
Recreational vehicle special events, §23-112-902.
Special motorcycle events, §23-112-802.
Nursing care.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Off premises.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Operating expense.
Lotteries, §23-115-103.
Orthotic device.
Health insurance consumer protection, §23-99-403.
Orthotic service.
Health insurance consumer protection, §23-99-403.
Owner.
Amusement ride and amusement attraction safety insurance, §23-89-502.
Life and health insurance guaranty association, §23-96-104.
Motor vehicle event data recorders, §23-112-107.
Participating provider.
Health insurance consumer protection, §23-99-403.
Payment of covered claims.
Property and casualty insurance guaranty, §23-90-103.
Periodic physical examinations.
Insurance.
Minimum basic benefit policies, §23-98-102.
Permitted coverages.
Insurance.
Minimum basic benefit policies, §23-98-102.
Person.
Charitable bingo and raffles enabling act, §23-114-102.
Health insurance consumer protection, §23-99-403.
DEFINED TERMS —Cont'd
Person —Cont'd
Health insurance coverage for mental illness, §23-99-503.
Life and health insurance guarantee association, §23-96-104.
Lotteries, §23-115-103.
Motor vehicle commission, §23-112-103.
Professional employer organizations, §23-92-402.
Property and casualty insurance guarantee, §23-90-103.
Property insurance.
Rural risk underwriting, §23-88-302.
Recreational vehicle franchise act, §23-112-1003.
Title insurance, §23-103-402.
Used motor vehicle buyer protection, §23-112-602.
Wagering on electronic games of skill, §23-113-103.
Personal care services.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Personal risk liability.
Liability risk retention, §23-94-203.
Plan of operation.
Liability risk retention, §23-94-203.
Plan sponsor.
Life and health insurance guaranty association, §23-96-104.
Policy.
Casualty insurance, §23-89-301.
Long-term care insurance, §23-97-304.
Policyholder.
Health insurance consumer protection, §23-99-403.
Policy owner.
Life and health insurance guaranty association, §23-96-104.
Portable electronics.
Property insurance, §23-88-501.
Portable electronics insurance, §23-88-501.
Portable electronics transaction.
Property insurance, §23-88-501.
Preexisting condition.
Long-term care insurance, §23-97-308.
Premises.
Charitable bingo and raffles enabling act, §23-114-102.
Premiums.
Life and health insurance guarantee association, §23-96-104.
Primary business office.
Charitable bingo and raffles enabling act, §23-114-102.

DEFINED TERMS —Cont'd
Primary eye care provider, §23-99-302.
Principal place of business.
Life and health insurance guaranty association, §23-96-104.
Principal stockholder.
Dog racing, §23-111-402.
Prior authorization.
Health insurance consumer protection, §23-99-420.
Private review agent.
Health insurance consumer protection, §23-99-420.
Prize.
Lotteries, withholding from prizes, §23-115-1002.
Prize promotion.
Lotteries, §23-115-103.
Producer.
Creditor-placed insurance, §23-101-103.
Product liability.
Liability risk retention, §23-94-203.
Professional employer agreement, §23-92-402.
Professional employer organization, §23-92-402.
Professional employer organization group, §23-92-402.
Professional employer organization service organization affidavit, §23-92-402.
Professional employer services, §23-92-402.
Property damage.
Casualty insurance, §23-89-404.
Proprietary part.
Recreational vehicle franchise act, §23-112-1003.
Prosthetic device.
Health insurance consumer protection, §23-99-403.
Prosthetic service.
Health insurance consumer protection, §23-99-403.
Provider.
Any willing provider law, enforcement, §23-99-802.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Public official.
Lotteries, §23-115-103.
Public venue.
Recreational vehicle special events, §23-112-902.
Special motorcycle events, §23-112-802.

DEFINED TERMS —Cont'd
Purchasing group.
Liability risk retention, §23-94-203.
Qualified family.
Insurance.
Minimum basic benefit policies, §23-98-102.
Qualified financial institution.
Title insurance, §23-103-402.
Qualified group.
Insurance.
Minimum basic benefit policies, §23-98-102.
Qualified individual.
Insurance.
Minimum basic benefit policies, §23-98-102.
Qualified long-term care insurance contract.
Long-term care insurance, §23-97-304.
Raffle.
Charitable bingo and raffles enabling act, §23-114-102.
Receivership court.
Life and health insurance guaranty association, §23-96-104.
Recreational vehicle.
Recreational vehicle franchise act, §23-112-1003.
Recreational vehicle owners' organization.
Recreational vehicle special events, §23-112-902.
Recreational vehicle salesperson.
Recreational vehicle franchise act, §23-112-1003.
Recreational vehicle special events, §23-112-902.
Refund reserve.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Relevant market area.
Motor vehicle commission, §23-112-103.
Renewal.
Casualty insurance, §23-89-301.
Resident.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Life and health insurance guarantee association, §23-96-104.
Responsible person.
Charitable bingo and raffles enabling act, §23-114-102.
Retailer.
Lotteries, §23-115-103.
Retail sale.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Risk retention group.
Liability risk retention, §23-94-203.
Risks.
Title insurance, §23-103-402.
Sale.
Used motor vehicle buyer protection, §23-112-602.
Sale at retail.
Motor vehicle commission, §23-112-103.
Second-stage manufacturer.
Motor vehicle commission, §23-112-103.
Self-insured.
Any willing provider law, enforcement, §23-99-802.
Self-insured health plan for employees of governmental entity.
Health insurance consumer protection, §23-99-420.
Sell.
Used motor vehicle buyer protection, §23-112-602.
Shares.
Lotteries, §23-115-103.
Significant positive economic impact.
Recreational vehicle special events, §23-112-902.
Special motorcycle events, §23-112-802.
Single interest insurance.
Creditor-placed insurance, §23-101-103.
Small employer.
Health insurance coverage for mental illness, §23-99-503.
Solicit.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Special motorcycle event, §23-112-802.
Specialty.
Health insurance consumer protection, §23-99-403.
Specialty vehicle.
Motor vehicle commission, §23-112-103.
State.
Liability risk retention, §23-94-203.
Life and health insurance guaranty association, §23-96-104.
Step therapy.
Health insurance consumer protection, §23-99-420.

DEFINED TERMS —Cont'd
Structured settlement annuity.
Life and health insurance guaranty association, §23-96-104.
Supervising entity.
Portable electronics insurance, §23-88-501.
Supplemental contract.
Life and health insurance guarantee association, §23-96-104.
Supplier.
Recreational vehicle franchise act, §23-112-1003.
Taxpayer.
Charitable bingo and raffles enabling act, §23-114-102.
Temporary help services.
Professional employer organizations, §23-92-402.
Temporary permit.
Motor vehicle commission, §23-112-103.
Third party administrator.
Multiple employer trusts and self-insured plans, §23-92-201.
Ticket.
Lotteries, §23-115-103.
Title insurance agency, §23-103-402.
Title insurance agent, §23-103-402.
Title insurance business, §23-103-402.
Title insurance policy, §23-103-402.
Title insurance premium, §23-103-402.
Title insurance report, §23-103-402.
Title insurer, §23-103-402.
Transacting insurance.
Professional employer organizations, §23-92-402.
Transient customer.
Recreational vehicle franchise act, §23-112-1003.
Travel trailer.
Recreational vehicle franchise act, §23-112-1003.
Type.
Health insurance consumer protection, §23-99-403.
Ultimate purchaser.
Motor vehicle commission, §23-112-103.
Unallocated annuity contract.
Life and health insurance guaranty association, §23-96-104.
Unclaimed lottery prize money.
Lotteries, §23-115-103.
Underwrite.
Title insurance, §23-103-402.

DEFINED TERMS —Cont'd
Uninsured motor vehicles, §23-89-401.
Used motor vehicle.
Buyer protection, §23-112-602.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyers protection, §23-112-602.
Used motor vehicle dealer.
Motor vehicle commission, §23-112-103.
Used motor vehicle salesman.
Buyer protection, §23-112-602.
Vendor.
Lotteries, §23-115-103.
Portable electronics insurance, §23-88-501.
Video lottery.
Lotteries, §23-115-103.
Warrantor.
Recreational vehicle franchise act, §23-112-1003.
Wholesaler.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.

DENTAL POINT OF SERVICE OPTION.
Health insurance carriers, §§23-99-601 to 23-99-608.
Applicability of subchapter, §23-99-608.
Attorney General to defend subchapter, §23-99-607.
Benefits offered same as offered through network, §23-99-604.
Coverage for out-of-network dentists, §23-99-604.
Definitions, §23-99-603.
Dental point of service act, §23-99-601.
Effective date, §23-99-608.
Enforcement authority of insurance Commissioner, §23-99-606.
Findings of general assembly, §23-99-602.
Purposes, §23-99-602.
Rules and regulations, §23-99-605.

DENTISTS AND DENTISTRY.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

DEVELOPMENTAL DISABILITIES.
Autism.
Health insurance coverage.
Autism spectrum disorders, §23-99-418.

DIETETICS PRACTICE.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

DISABILITY INSURANCE.
Health insurance.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

DISCRIMINATION.
Charitable bingo and raffles.
Admission to raffle or game of bingo.
Discrimination prohibited, §23-114-404.
Choice of health care providers by patients.
Discriminatory terms in health benefit plans, §23-99-204.

DRIVE-THRU DELIVERIES.
Health insurance, §23-99-404.

DRUGS AND CONTROLLED SUBSTANCES.
Health insurance.
Prescriptions.
Formulary for prescription drugs, §23-99-409.
Prescriptions.
Health insurance.
Formulary for prescription drugs, §23-99-409.

DURABLE MEDICAL EQUIPMENT.
Any willing provider law enforcement.
Health care provider defined to include provider of durable medical equipment, §23-99-803.

DVD PLAYERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

E

EARTHQUAKE AUTHORITY, §§23-102-101 to 23-102-119.
Administrative assessment, §23-102-112.
Amount of coverage offered, §23-102-113.
Appeals of ruling or decision of board, §23-102-115.
Assessment by insurers, §23-102-112.
Board.
Executive director or plan administrator, appointment, §23-102-111.
Membership, terms, vacancies and expenses, §23-102-105.
Plan of operation, adoption, §23-102-107.
Powers, §23-102-108.
Body politic of state, §23-102-104.
Contributions, initial operating capital, §23-102-112.
Coordination with federal or multistate program, §23-102-117.
Coverage accessible through authority, §23-102-110.
Created, §23-102-104.
Deductibles determined by board, §23-102-113.
Definitions, §23-102-103.
Eligibility for residential earthquake insurance.
Notice to policyholders, §23-102-114.
Executive director.
Appointment by board, duties, §23-102-111.
Exemption from property and casualty insurance guaranty act, §23-102-118.
Exemption from taxes, §23-102-104.
Immunity of participating insurers, authority agents or employees, etc., §23-102-106.
Intent of provisions, §23-102-102.
Legislative findings, §23-102-102.
Living expenses, coverage for, §23-102-113.
Market assistance program, §23-102-109.
Suspension, availability and competition in marketplace, §23-102-107.
Noticed as to eligibility for insurance, §23-102-114.
Participation by insurers in market assistance program, §23-102-109.

EARTHQUAKE AUTHORITY —Cont'd
Personal property, coverage for, §23-102-113.
Plan administrator.
Appointment by board, duties, §23-102-111.
Plan of operation, §23-102-107.
Political subdivision, authority created as, §23-102-104.
Powers of board, §23-102-108.
Purchasing law and procurement act, exemption, §23-102-104.
Rates for plan coverage, §23-102-112.
Rulemaking authority, §23-102-116.
Short title, §23-102-101.
Suspension of operations of market assistance program or authority.
Sufficient availability and competition in marketplace, §23-102-107.
Termination of authority, §23-102-119.

EARTHQUAKE INSURANCE.
Residential earthquake insurance.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.

ECONOMIC AND COMMUNITY DEVELOPMENT.
Minority business economic development.
Lotteries.
Participation by minority-owned businesses, §23-115-401.
Recreational vehicle special events, §§23-112-901 to 23-112-905.

EDUCATION.
Lottery for education, §§23-115-101 to 23-115-1102.

ELECTIONS.
Greyhound racing.
Wagering on electronic games of skill.
Approval by local option election, §23-113-201.
Horse racing.
Racing meets.
Sunday racing, §23-110-402.
Wagering on electronic games of skill.
Approval by local option election, §23-113-201.

ELECTRONIC GAMES.
Greyhound racing.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.
Horse racing.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.

E-MAIL.
Portable electronics insurance.
Notice to enrolled customer.
Proof of notice, §23-88-506.

EMPLOYMENT RELATIONS.
Greyhound racing.
Employees of franchise holders, §23-111-308.
Wagering on electronic games of skill.
Licenses for employees and suppliers, §23-113-303.
Horse racing.
Employees of franchise holders, §§23-110-308, 23-110-412.
Wagering on electronic games of skill.
Licenses for employees and suppliers, §23-113-303.
Professional employer organizations, §§23-92-401 to 23-92-419.

ETHICS.
Commission.
Lottery vendors, enforcement powers regarding, §23-115-501.

EVIDENCE.
Motor vehicles.
Event data recorders, §23-112-107.

EXAMINATIONS.
Continuing care providers.
Insolvent facilities.
Financial examinations conducted, §23-93-114.
Legal insurance.
Affairs of insurers, §23-91-220.

EXCISE TAXES.
Charitable bingo and raffles.
Distributors of bingo equipment, §§23-114-601 to 23-114-606.

EXECUTION OF JUDGMENTS.
Lotteries.
Withholding from prizes, §23-115-403.

EYE CARE PROVIDERS.
Health insurance.
Primary eye care providers, §§23-99-301 to 23-99-305.

F

FEES.
Bingo.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-203.

FEES —Cont'd
Charitable bingo and raffle enabling act.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-203.
Continuing care providers.
Facility entrance fee.
Defined, §23-93-201.
Licensed application fees, §23-93-206.
Greyhound racing.
Franchises to conduct races, §23-111-305.
Legal insurance.
Payment to commissioner, §23-91-225.
Motor vehicle dealers.
Auto auction fees.
Salvage-titled or parts-only titled vehicles, §23-112-614.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Portable electronics insurance.
Vendors.
Schedule of license fees, §23-88-507.
Professional employer organizations.
Employer service assurance organization affidavit, §23-92-414.
Licenses, §23-92-407.
Raffles.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-307.
Recreational vehicle franchises.
License, §23-112-1004.

FIDUCIARIES.
Lotteries.
Retailers, fiduciary duties, §23-115-605.

FINANCE AND ADMINISTRATION DEPARTMENT.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

FINES.
Bingo.
Charitable bingo and raffles enabling act violations, §23-114-104.
Charitable bingo and raffles enabling act violations, §23-114-104.

FINES —Cont'd
Dog racing.
Failure to appear or testify at hearings, §23-111-205.
Failure to comply with franchise, §23-111-501.
Failure to pay tax, §23-111-513.
False affidavits of officers and directors, §23-111-406.
Improper wagering, §23-111-508.
Issuance of sales tax-free passes, §23-111-510.
Horse racing.
Compliance with license, §23-110-401.
Failure to pay tax, §23-110-415.
False applications for employment, §23-110-308.
Improper wagering, §23-110-405.
Issuance of sales tax-free passes, §23-110-411.
Long-term care insurance.
Violations of act, §23-97-321.
Lotteries.
Minors purchasing tickets, §23-115-901.
Retailers, false statement on license application, §23-115-903.
Portable electronics insurance.
Violation of provisions, §23-88-505.
Professional employer organizations.
Penalties for violations, §23-92-412.
Property and casualty insurance guaranty.
Failure to pay assessments, §23-90-113.
Property insurance.
Willful violations by insurer, §23-88-204.
Title insurance.
Disciplinary actions and other penalties, §23-103-416.

FINGERPRINTS.
Charitable bingo and raffles.
Authorized organizations.
Criminal background checks, §23-114-303.
Greyhound racing.
Criminal background checks.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Horse racing.
Criminal background checks.
Horse owners, trainers, jockeys and jockey agents, §23-110-204.

FINGERPRINTS —Cont'd
Horse racing —Cont'd
Criminal background checks —Cont'd
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.

FIRE PROTECTION DISTRICTS.
Insurance.
Rate credit on risks.
Legislative findings and intent, §23-88-103.
Only for persons who pay dues and subscription payments to district, §23-88-103.
Rural fire protection districts, §23-88-103.
Rural volunteer fire departments.
Rate credit on risks, §23-88-103.
Response to fire.
Insurer required to pay reasonable costs of services from insurance proceeds, §23-88-102.
Written and signed release from fire chief required prior to disbursing remaining proceeds, §23-88-102.
Rural fire protection service.
Insurance.
Rate credit on risks.
Legislative intent, §23-88-103.
Prerequisites to granting, §23-88-103.
Response to fire.
Insurer required to pay reasonable costs of services from insurance proceeds, §23-88-102.
Written and signed release from fire chief required prior to disbursing remaining proceeds, §23-88-102.

FIRES AND FIRE PREVENTION.
Insurance.
Fire loss reporting act.
Property insurance, §§23-88-401 to 23-88-405.
Rating plans, fire protection impact statement, §23-88-104.

FRANCHISES.
Recreational vehicle dealers, §§23-112-1001 to 23-112-1023.

FRAUD.
Lotteries.
False statement by retailer on license application, §23-115-903.

FRAUD —Cont'd
Lotteries —Cont'd
Oversight functions of commission, §23-115-206.
Penalties, §23-115-902.
Prizes not to be awarded, §23-115-403.
Motor vehicle liability insurance.
Defrauding secured creditor.
Unauthorized use of proceeds, §23-89-216.

FREEDOM OF CHOICE OF HEALTH CARE PROVIDERS BY PATIENTS, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.

FRIVOLOUS ACTIONS.
Lotteries.
Administrative orders of commission, appealing, §23-115-209.

FUNDRAISERS.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

G

GAG CLAUSES.
Health insurance.
Prohibition, §23-99-407.

GAMBLING.
Bingo and raffles.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.
Compulsive gambling disorder, treatment and education programs.
Lottery commission, §23-115-410.
Lotteries.
Lottery fraud, §23-115-902.
Pari-mutuel wagering.
Greyhound racing, §23-111-508.
Horse racing, §23-110-405.
Raffles and bingo.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

GARNISHMENT.
Lotteries.
Withholding from prizes, §23-115-403.

GASTRIC BYPASS SURGERY.
Health insurance.
Gastric pacemakers.
Required coverage, §23-99-419.

GENERAL ASSEMBLY.
House of representatives.
Lottery bills.
Fiscal impact statement, §23-115-104.

GENERAL ASSEMBLY —Cont'd
Lottery bills.
Fiscal impact statement, §23-115-104.
Lottery commission legislative oversight committee, §§23-115-1101, 23-115-1102.
Reports to committee, §23-115-206.
Director, §23-115-302.

GIFTS.
Lotteries.
Gifts from retailers, §23-115-601.
Gifts from vendors, §23-115-501.

GLOBAL POSITIONING SYSTEMS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

GO KARTS.
Insurance for amusements, §§23-89-501 to 23-89-518.

GPS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

GREYHOUND RACING.
Additional racing days, §§23-111-505, 23-111-515.
Admission tax, §23-111-510.
Affidavits.
Residence of officers and directors of franchise holders, §23-111-406.
Penalty for false affidavit, §23-111-406.
Appeals.
Franchises to conduct races.
Refusal to grant temporary franchise, §23-111-302.
Applicability of provisions.
Nonapplicability to other methods or forms of racing, §23-111-102.
Bonds, surety.
Franchise holders, §23-111-514.
Citation of law.
Short title, §23-111-101.
Community colleges.
Racing meets.
Use of revenue derived from additional racing days, §23-111-515.
Conflicts of interest.
Racing commission.
Persons prohibited from membership, §23-111-202.
Criminal history information and background.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.

GREYHOUND RACING —Cont'd
Electronic means.
Wagering.
Patrons with money on deposit placing wager by, §23-111-508.
Employees.
Health insurance.
Proceeds from wagering to fund, §23-111-516.
Fees.
Franchises to conduct races, §23-111-305.
Licenses.
Disposition of license fees, §23-111-104.
Racing meets, §23-111-506.
Franchises to conduct races.
Appeals.
Refusal to grant temporary franchise, §23-111-302.
Applications for, §23-111-302.
Additional information, §23-111-404.
Deposit to accompany, §23-111-302.
Bonds, surety.
Franchise holder, §23-111-514.
Construction of racing plant, §23-111-305.
Elections.
Approval of electors required, §23-111-303.
Ballots, §23-111-304.
Conduct of elections, §23-111-304.
Contests, §23-111-304.
Generally, §23-111-304.
Notice, §23-111-304.
Subsequent elections, §23-111-306.
Employees of franchise holders.
Health insurance.
Proceeds from wagering to fund, §23-111-516.
Restrictions concerning, §23-111-308.
Fee, §23-111-305.
Granted prior to July 1, 1957, §23-111-307.
Granting, §23-111-203.
Approval of electors required, §23-111-303.
Limitations on issuance, §23-111-301.
Health insurance for franchise holder's employees, §23-111-516.
Hearing on application, §23-111-302.
Number of franchises.
Limitations, §23-111-301.
Officers, directors and shareholders of franchise holder.
Additional information in application for franchise, §23-111-404.

GREYHOUND RACING —Cont'd
Franchises to conduct races —Cont'd
Officers, directors and shareholders of franchise holder —Cont'd
Changes in management personnel and ownership of stock.
Franchise holders to report, §23-111-407.
Grounds for refusing franchise, §23-111-405.
Investigations.
Considerations, §23-111-405.
Cooperation with federal and state officers and agencies, §23-111-408.
Power of commission, §23-111-405.
Special investigators, §23-111-409.
Legislative declaration, §23-111-401.
Principal stockholder.
Defined, §23-111-402.
Purpose of provisions, §23-111-401.
Residence requirement for officers and directors, §23-111-406.
Affidavit, §23-111-406.
Penalty for false affidavit, §23-111-406.
Supplemental nature of provisions, §23-111-403.
Racing meets.
Racing meets to be held only in accordance with franchises, §23-111-501.
Refusal of temporary franchise.
Grounds, §23-111-405.
Required, §23-111-501.
Temporary franchise, §23-111-302.
Greyhound owners.
Criminal background checks, §23-111-203.
Greyhound trainers.
Criminal background checks, §23-111-203.
Health insurance for franchise holder's employees, §23-111-516.
Hearings.
Franchises to conduct races.
Hearing on application, §23-111-302.
Racing commission, §23-111-205.
Indigent persons.
Racing meetings.
Additional racing days.
Use of revenue derived from, §23-111-505.
Investigations.
Officers, directors and shareholders of franchise holders, §§23-111-405, 23-111-409.
Legalized, §23-111-301.

GREYHOUND RACING —Cont'd
Licenses.
Fees.
Disposition of license fees, §23-111-104.
Racing meets, §23-111-506.
Greyhound owners.
Criminal background checks, §23-111-203.
Greyhound trainers.
Criminal background checks, §23-111-203.
Racing meets, §23-111-506.
Application for, §23-111-506.
Fees, §23-111-506.
Required, §23-111-506.
Minors.
Employment by franchise holders.
Prohibited, §23-111-308.
Patrons at race tracks.
Prohibited, §23-111-308.
Wagering.
Prohibited, §23-111-508.
Municipalities.
Racing meets.
Small municipalities.
Use of revenue derived from additional racing days, §23-111-515.
Notice.
Franchises to conduct races.
Elections, §23-111-304.
Passes.
Distribution, §23-111-105.
Maximum number, §23-111-105.
Penalties.
Conducting racing meet other than in accordance with franchise, §23-111-501.
Disposition of fines, §23-111-104.
Nonpayment of taxes by franchise holders, §23-111-513.
Residence requirement for officers and directors of franchise holders.
False affidavit as to, §23-111-406.
Subpoenas of racing commission.
Noncompliance, §23-111-205.
Wagering.
Methods other than pari-mutuel or certificate method, §23-111-508.
Racing commission.
Construction of references to "commission," §23-111-201.
Duties, §23-111-203.
Hearings, §23-111-205.
Persons prohibited from membership, §23-111-202.
Powers, §23-111-203.

GREYHOUND RACING —Cont'd
Racing commission —Cont'd
Right of entry, §23-111-512.
Rules and regulations, §23-111-204.
Wagering on electronic games of skill, §§23-113-301 to 23-113-304.
Racing days.
Additional racing days.
Benefit of small municipalities and community colleges, §23-111-515.
Disaster victims, indigent persons and educational purposes, §23-111-505.
Purposes for which held, §23-111-505.
Racing days and hours, §23-111-502.
Racing meets.
Additional racing days.
Distribution of net proceeds to municipalities, §23-111-504.
Purposes for which held, §23-111-505.
Rules and regulations, §23-111-503.
Small municipalities and community colleges, §23-111-515.
Admission tax, §23-111-510.
Community colleges.
Additional racing days.
Use of revenue derived from, §23-111-515.
Easter Sunday or Christmas day.
Racing on prohibited, §23-111-502.
Franchises to conduct races.
Racing meets to be held only in accordance with franchises, §23-111-501.
Indigent persons.
Additional racing days.
Use of revenue derived from, §23-111-505.
Licenses, §23-111-506.
Application for, §23-111-506.
Fees, §23-111-506.
Required, §23-111-506.
Racing days and hours, §23-111-502.
Small municipalities.
Additional racing days.
Use of revenue derived from, §23-111-515.
Racing passes.
Distribution, §23-111-105.
Maximum number, §23-111-105.
Records.
Franchise holders, §23-111-511.
Amount of moneys wagered, §23-111-509.

GREYHOUND RACING —Cont'd
Records —Cont'd
Racing commission to have access, §23-111-512.
Rules and regulations.
Racing commission, §23-111-204.
Subpoenas.
Powers of racing commission, §23-111-205.
Taxation.
Admission tax, §23-111-510.
Disposition of revenue, §23-111-517.
Disposition of taxes, §23-111-104.
Telephone or mobile device.
Patrons with money on deposit placing wager by, §23-111-508.
Title of law.
Short title, §23-111-101.
Wagering.
Disposition of moneys wagered, §23-111-509.
Health insurance for employees, §23-111-516.
Electronic games of skill, §§23-113-101 to 23-113-604.
Electronic means.
Patrons with money on deposit placing wager by, §23-111-508.
Felonies.
Methods other than pari-mutuel or certificate method, §23-111-508.
Minors.
Betting by.
Prohibited, §23-111-508.
Pari-mutuel or certificate method.
Authorized at licensed tracks, §23-111-508.
Penalties.
Methods other than pari-mutuel or certificate method, §23-111-508.
Simultaneously televised horse or greyhound races, §23-111-508.
Statutes prohibiting betting on racing.
Inapplicable, §23-111-103.
Telephone or mobile devices.
Patrons with money on deposit placing wager by, §23-111-508.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.
Arkansas thoroughbred and greyhound breeding activities.
Contributions to purses and promotion of, §23-113-401.
Citation of act, §23-113-102.
Conditions and limitations, §23-113-201.
Conflict of laws, §23-113-602.

GREYHOUND RACING —Cont'd
Wagering on electronic games of skill —Cont'd
Contributions to purses and promotion of Arkansas thoroughbred and greyhound breeding activities, §23-113-401.
Criminal background checks.
Employees and suppliers, §23-113-303.
Definitions, §23-113-103.
Licenses.
Employees and suppliers, §23-113-303.
Fees, penalties and fines, disposition of, §23-113-604.
Local option election.
Authorization subject to approval by, §23-113-201.
Pari-mutuel wagering, §23-113-603.
Privilege fees.
Disposition, §23-113-604.
Payment in lieu of taxes, §23-113-501.
Public policy, §23-113-101.
Racing commission, §§23-113-301 to 23-113-304.
Adverse commission action, §23-113-304.
Hearings, §23-113-304.
Jurisdiction, §23-113-301.
Licenses for employees and suppliers, §23-113-303.
Powers and duties, §23-113-302.
Recordkeeping requirements, §23-113-601.
Title of act, §23-113-102.
Witnesses.
Powers of racing commission as to, §23-111-205.

GRIEVANCE SYSTEMS.
Managed health care plans, §§23-99-701 to 23-99-706.

GROSS RECEIPTS TAX.
Greyhound racing.
Wagering on electronic games of skill.
Privilege fees in lieu of taxes, §23-113-501.
Horse racing.
Wagering on electronic games of skill.
Privilege fees in lieu of taxes, §23-113-501.

GYNECOLOGICAL SERVICES.
Health insurance.
Required coverage, §23-99-406.

H

HABITUAL OR REPEAT OFFENDERS.
Used motor vehicle buyers protection, §23-112-603.

HANDHELD GAMING DEVICES.
Portable electronics insurance, §§23-88-501 to 23-88-507.

HEAD HUNTERS.
Professional employer organizations, §§23-92-401 to 23-92-419.

HEALTH.
Continuing care providers, §§23-93-101 to 23-93-207.

HEALTH CARE PROVIDERS.
Patient protection act.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.

HEALTH INSURANCE.
Any willing provider laws.
Choice of health care providers by patients generally, §§23-99-201 to 23-99-209.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.
Autism spectrum disorders.
Required coverage, §23-99-418.
Breast cancer.
Mastectomies.
Required coverage, §23-99-405.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Consumer protection, §§23-99-401 to 23-99-420.
Application of provisions, §23-99-416.
Applications of providers, §23-99-411.
Autism spectrum disorders, §23-99-418.
Benefits, §23-99-404.
Continuity of care, §23-99-408.
Definitions, §23-99-403.
Disclosures, §23-99-413.
Enforcement, §23-99-415.
Gag clause, §23-99-407.
Gastric pacemakers, §23-99-419.
Grievances, §23-99-410.
Legislative findings, §23-99-402.
Mastectomies, §23-99-405.
Orthotic devices and services, coverage, §23-99-417.

HEALTH INSURANCE —Cont'd
Consumer protection —Cont'd
Preadmission review, §23-99-420.
Prescription drugs, §23-99-409.
Prior authorization, §23-99-420.
Prosthetic devices and services, coverage, §23-99-417.
Provider input, §23-99-412.
Regulations, §23-99-414.
Services, §23-99-406.
Short title, §23-99-401.
Utilization review, §23-99-420.
Continuity of care.
Required, §23-99-408.
Dental point of service option, §§23-99-601 to 23-99-608.
Applicability of subchapter, §23-99-608.
Attorney General to defend subchapter, §23-99-607.
Benefits offered same as offered through network, §23-99-604.
Coverage for out-of-network dentists, §23-99-604.
Definitions, §23-99-603.
Effective date, §23-99-608.
Enforcement authority of insurance Commissioner, §23-99-606.
Findings of general assembly, §23-99-602.
Purposes, §23-99-602.
Rules and regulations, §23-99-605.
Title of act, §23-99-601.
Disclosure requirements, §23-99-413.
Gag clause prohibition, §23-99-407.
Drive-thru deliveries.
Required coverage, §23-99-404.
Drugs.
Prescriptions.
Formulary for prescription drugs.
Exceptions, §23-99-409.
Eye care providers.
Primary eye care providers, §§23-99-301 to 23-99-305.
Freedom of choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Gag clauses.
Prohibition, §23-99-407.
Gastric pacemakers.
Required coverage, §23-99-419.
Greyhound racing franchise holder's employees, §23-111-516.
Grievance procedures, §23-99-410.

HEALTH INSURANCE —Cont'd
Grievance systems and quality assessment and improvement systems.
Managed care plans, §§23-99-701 to 23-99-706.
Benefits offered, inapplicability of director's regulatory authority, §23-99-705.
Definitions, §23-99-702.
Grievance system, §23-99-703.
Insurance exempted from provisions, §23-99-705.
Legislative findings, §23-99-701.
Power to implement and enforce provisions, §23-99-706.
Quality assessment and improvement systems, §23-99-704.
Gynecological services.
Required coverage, §23-99-406.
Health care providers.
Choice of patients, protection, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Eye care providers.
Primary eye care providers, §§23-99-301 to 23-99-305.
Primary eye care providers, §§23-99-301 to 23-99-305.
Mastectomies.
Required coverage, §23-99-405.
Maternity.
Obstetrical and gynecological services.
Required coverage, §23-99-406.
Required coverage, §23-99-404.
Mental health, §§23-99-501 to 23-99-512.
Applicability, §23-99-509.
Definitions, §23-99-503.
Enforcement, §23-99-511.
Exclusions, §23-99-504.
Exemptions.
Increased costs, §23-99-505.
Increased costs.
Exemption, §23-99-505.
Intent of state, §23-99-502.
Medical necessity, §23-99-507.
Out-of-network benefits, §23-99-512.
Parity requirements, §23-99-506.
Provisions permitted, §23-99-508.
Required coverage, §§23-99-501 to 23-99-512.
Rules and regulations, §23-99-510.
Short title, §23-99-501.
Obstetrical services.
Required coverage, §23-99-406.

HEALTH INSURANCE —Cont'd
Orthotic devices and services.
Coverage required, §23-99-417.
Patient protection act, §§23-99-201 to 23-99-209.
Preadmission review, §23-99-420.
Prescription drug benefits.
Formulary for prescription drugs.
Procedure for exceptions, §23-99-409.
Primary eye care providers.
Citation of act.
Short title, §23-99-301.
Definitions, §23-99-302.
Health benefit plans.
Defined, §23-99-302.
Requirements, §23-99-303.
Remedies for violations, §23-99-305.
Right to receive treatment from personal doctor.
Provisions not to prevent treatment, §23-99-304.
Title of act.
Short title, §23-99-301.
Prior authorization, §23-99-420.
Prosthetic devices and services.
Coverage required, §23-99-417.
Providers.
Input required, §23-99-412.
Processing applications, §23-99-411.
Rules and regulations.
Consumer protection, §23-99-414.
Mental health coverage, §23-99-510.
Utilization review, §23-99-420.

HEALTH MAINTENANCE ORGANIZATIONS.
Any willing provider laws.
Choice of health care providers by patients, §§23-99-201 to 23-99-209.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Dental point of service option, §§23-99-601 to 23-99-608.
Grievance systems and quality assessment and improvement programs, §§23-99-701 to 23-99-706.
Patient protection act.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.

HEARINGS.
Continuing care providers.
Licenses.
Disciplinary actions, §23-93-205.
Reconsideration of denied application, §23-93-206.
Greyhound racing.
Franchises to conduct races.
Hearing on application, §23-111-302.
Racing commission, §23-111-205.
Horse racing.
Franchises to conduct horse races.
Hearing on application, §23-110-302.
Racing commission, §23-110-205.
Insurance.
Risk-sharing plans for property and casualty insurance.
Availability of any amount or kind of insurance, §23-95-104.

HEIRS.
Franchises.
Motor vehicles, §23-112-403.

HOME HEALTH CARE SERVICES.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

HORSE RACING.
Admission tax, §23-110-411.
Appeals.
Findings and orders of racing commission, §23-110-205.
Franchises to conduct horse races.
Refusal to grant, §23-110-302.
Applicability of provisions.
Nonapplicability to other methods or forms of racing, §23-110-103.
Bonds, surety.
Franchise holders, §23-110-414.
Racing commission.
Secretary, §23-110-202.
Breaks, computing, §23-110-410.
Citation of law.
Short title, §23-110-101.
Conflict of laws.
Statutes prohibiting betting on racing inapplicable, §23-110-102.
Conflicts of interest.
Racing commission.
Persons prohibited from membership, §23-110-201.

HORSE RACING —Cont'd
Criminal history information and background.
Owners, trainers, jockeys, and jockey agents, §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Elections.
Racing meets.
Sunday racing, §23-110-402.
Employees of franchise holders.
Applications for employment, §23-110-308.
Racing commission authorized to examine, §23-110-308.
Misdemeanors.
Applications for employment.
False information, §23-110-308.
Percentage of employees required to be registered voters in Arkansas.
Failure to comply with order for adjustment, §23-110-308.
Penalties.
Applications for employment.
False information, §23-110-308.
Percentage of employees required to be registered voters in Arkansas.
Failure to comply with order for adjustment, §23-110-308.
Registered voters in Arkansas.
Percentage of employees required to be, §23-110-308.
Time for adjustment, §23-110-308.
Fees.
Franchises to conduct horse races, §23-110-305.
Licenses.
Disposition of fees, §23-110-104.
Racing meets, §23-110-403.
Franchises to conduct horse races.
Applications for franchises, §23-110-302.
Bond of franchise holder, §23-110-414.
Construction of racing plant, §23-110-305.
Elections.
Approval of electors, §23-110-303.
Ballots, §23-110-304.
Conduct of elections, §23-110-304.
Contests, §23-110-304.
Continuing horse racing in county.
Special election, §23-110-306.
Notice, §23-110-304.
Proclamation of result, §23-110-304.
Subsequent elections, §23-110-306.

HORSE RACING —Cont'd
Franchises to conduct horse races —Cont'd
Fees, §23-110-305.
Franchises granted prior to July 1, 1957, §23-110-307.
Granting of franchises, §23-110-301.
Approval of electors required, §23-110-303.
Granted prior to July 1, 1957, §23-110-307.
Limitations on issuance, §23-110-301.
Hearing on application for franchise, §23-110-302.
Number of franchises.
Limitations, §23-110-301.
Refusal to grant, §23-110-302.
Appeal, §23-110-302.
Temporary franchise, §23-110-302.
Franchise issued in exchange for temporary franchise, §23-110-305.
Wagering.
Disposition of money wagered.
Portion for franchise holder, §23-110-407.
Funds.
Wagering.
Arkansas racing commission purse and awards funds, §23-110-409.
Hearings.
Franchises to conduct horse races.
Hearing on application, §23-110-302.
Racing commission, §23-110-205.
Horse owners.
Criminal background checks, §23-110-204.
Horse trainers.
Criminal background checks, §23-110-204.
Investigations.
Racing commission, §23-110-413.
Jockeys and jockey agents.
Criminal background checks, §23-110-204.
Legalized, §23-110-301.
Licenses.
Criminal background checks.
Horse owners, trainers, jockeys and jockey agents, §23-110-204.
Fees.
Disposition of fees, §23-110-104.
Racing meets, §23-110-403.
Racing meets, §23-110-403.
Applications, §23-110-403.
Fee, §23-110-403.

HORSE RACING —Cont'd
Licenses —Cont'd
Racing meets —Cont'd
Holding without license.
Penalties, §23-110-401.
Number of meets.
Limitation on, §23-110-402.
Required, §23-110-403.
Minors.
Wagering.
Prohibited for persons under 18, §23-110-405.
Notice.
Franchises to conduct horse races.
Elections, §23-110-304.
Continuing horse races in county.
Results of election, §23-110-306.
Racing meets.
Sunday racing.
Notice of election, §23-110-402.
Oaths.
Racing commission.
Oath of office of members, §23-110-201.
Passes.
Distribution, §23-110-105.
Maximum number, §23-110-105.
Penalties.
Disposition of fines, §23-110-104.
Employees of franchise holders.
Applications for employment.
False information, §23-110-308.
Percentage of employees required to be registered voters in Arkansas.
Failure to comply with order for adjustment, §23-110-308.
Failure of franchise holders to pay taxes, §23-110-415.
Racing meets.
Holding racing meet without license, §23-110-401.
Subpoenas of racing commission.
Noncompliance, §23-110-205.
Racing commission.
Appointment of members, §23-110-201.
Conflicts of interest.
Persons prohibited from membership, §23-110-201.
Creation, §23-110-201.
Duties.
Generally, §23-110-204.
Expenses of members, §23-110-201.
Hearings, §23-110-205.
Investigations, §23-110-413.
Meetings, §23-110-203.
Number of members, §23-110-201.

HORSE RACING —Cont'd
Racing commission —Cont'd
Oath of office of members, §23-110-201.
Officers, §23-110-202.
Per diem of members, §23-110-201.
Powers and duties.
Generally, §§23-110-204, 23-110-205.
Qualifications of members, §23-110-201.
Persons prohibited from membership, §23-110-201.
Quorum, §23-110-203.
Removal of members, §23-110-201.
Right of entry, §23-110-413.
Secretary.
Bonds, surety, §23-110-202.
Director of department of finance and administration, §23-110-202.
Duties, §23-110-202.
Employment of personnel, §23-110-202.
Terms of members, §23-110-201.
Wagering on electronic games of skill, §§23-113-301 to 23-113-304.
Racing meets.
Admission tax, §23-110-411.
Elections.
Sunday racing, §23-110-402.
Licenses, §23-110-403.
Applications, §23-110-403.
Fee, §23-110-403.
Holding without license.
Penalties, §23-110-401.
Number of meets.
Limitation on, §23-110-402.
Required, §23-110-403.
Misdemeanors.
Holding racing meet without license, §23-110-401.
Notice.
Sunday racing.
Notice of election, §23-110-402.
Number of days in one meet, §23-110-402.
Number of meets during year, §23-110-402.
Penalties.
Holding racing meet without license, §23-110-401.
Racing programs.
Submission for approval, §23-110-402.
Sunday racing, §23-110-402.
Wagering programs.
Submission for approval, §23-110-402.

HORSE RACING —Cont'd
Racing meets —Cont'd
Writing various races for each racing meet.
Franchise holder responsible for, §23-110-409.
Racing passes.
Distribution, §23-110-105.
Maximum number, §23-110-105.
Records.
Franchise holders, §23-110-412.
Racing commission to have access to records, §23-110-413.
Subpoenas.
Racing commission.
Powers, §23-110-205.
Sunday.
Racing meets.
Sunday racing, §23-110-402.
Taxation.
Admission tax, §23-110-411.
Disposition of taxes, §23-110-104.
Telephone or mobile devices.
Patrons with money on deposit placing wagers by, §23-110-405.
Title of law.
Short title, §23-110-101.
Wagering.
Breaks, computing, §23-110-410.
Disposition of money wagered.
Arkansas racing commission purse and awards fund, §23-110-409.
Breaks, §23-110-410.
Funds.
Arkansas racing commission purse and awards fund, §23-110-409.
Generally, §23-110-406.
Payment to winning bettors required, §23-110-406.
Portion for franchise holder, §23-110-407.
Minors.
Wagering by persons under 18 prohibited, §23-110-405.
Misdemeanors.
Forms of wagering other than pari-mutuel or certificate method, §23-110-405.
Pari-mutuel or certificate method.
Authorized at licensed track, §23-110-405.
Penalties.
Forms of wagering other than pari-mutuel or certificate method, §23-110-405.

HORSE RACING —Cont'd
Wagering —Cont'd
Races run at other race tracks shown live by television or otherwise.
Franchise holder may enter into agreements whereby patrons may wager on, §23-110-405.
Racing meets.
Wagering programs.
Submission for approval, §23-110-402.
Statutes prohibiting betting on racing.
Inapplicable, §23-110-102.
Telephone or mobile devices.
Patrons with money on deposit placing wagers by, §23-110-405.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.
Arkansas thoroughbred and greyhound breeding activities.
Contributions to purses and promotion of, §23-113-401.
Citation of act, §23-113-102.
Conditions and limitations, §23-113-201.
Conflict of laws, §23-113-602.
Contributions to purses and promotion of Arkansas thoroughbred and greyhound breeding activities, §23-113-401.
Criminal background checks.
Employees and suppliers, §23-113-303.
Definitions, §23-113-103.
Licenses.
Employees and suppliers, §23-113-303.
Fees, penalties and fines, disposition of, §23-113-604.
Local option election.
Authorization subject to approval by, §23-113-201.
Pari-mutuel wagering, §23-113-603.
Privilege fees.
Disposition, §23-113-604.
Payment in lieu of taxes, §23-113-501.
Public policy, §23-113-101.
Racing commission, §§23-113-301 to 23-113-304.
Adverse commission action, §23-113-304.
Hearings, §23-113-304.
Jurisdiction, §23-113-301.
Licenses for employees and suppliers, §23-113-303.
Powers and duties, §23-113-302.

HORSE RACING —Cont'd
Wagering on electronic games of skill —Cont'd
Recordkeeping requirements, §23-113-601.
Title of act, §23-113-102.
Witnesses.
Racing commission.
Powers as to, §23-110-205.

HOSPICE CARE.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

HOSPITAL AND MEDICAL SERVICE CORPORATIONS.
Dental point of service option, §§23-99-601 to 23-99-608.

HOSPITALS AND OTHER HEALTH FACILITIES.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

I

IMMUNITY.
Arkansas earthquake authority, §23-102-106.
Insurance.
Life and health insurance guaranty association, §23-96-108.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Risk-sharing plans for property and casualty insurance.
Commissioner, representatives or any plan, its participants or employees, §23-95-107.
Lotteries.
Sovereign immunity of state, §23-115-208.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

INCOME TAX.
Lotteries.
Prizes subject to tax, §23-115-403.

INCOME TAX —Cont'd
Lotteries —Cont'd
Withholding of tax.
Powers of lottery commission, §23-115-205.
Withholding.
Lotteries.
Commission powers, §23-115-205.

INCOME WITHHOLDING.
Insurance.
Minimum basic benefit policies.
Payroll deduction, §23-98-108.

INDIGENT PERSONS.
Greyhound racing.
Racing meets.
Additional racing days.
Use of revenue derived from, §23-111-505.

INJUNCTIONS.
Charitable bingo and raffles, §23-114-704.
Choice of health care providers by patients.
Enforcement of any willing provider laws, §23-99-803.
Enforcement of provisions by providers, §23-99-207.
Continuing care providers.
Enforcement of chapter, §23-93-104.
Insurance.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Risk retention and purchasing groups.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Lotteries.
Retailers continuing to operate after injunction of business, §23-115-609.
Professional employer organizations.
Penalties for violations, §23-92-412.
Recreational vehicle franchises, §23-112-1023.
Risk retention and purchasing groups.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.

INSPECTIONS.
Amusements.
Amusement ride and amusement attraction safety insurance.
Safety inspections, §§23-89-504, 23-89-507.
Charitable bingo and raffles.
Premises of raffle or game of bingo, §23-114-703.

INSTALLMENT CONTRACTS.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

INSURANCE.
Actions.
Casualty insurance.
No liability or cause of action against person for information or statements relating to cancellation or nonrenewal of policies, §23-89-308.
Advertising.
Life and health insurance guaranty association act.
Advertisement of act in insurance sales.
Prohibited, §23-96-105.
Property and casualty insurance guaranty.
Prohibited advertisements or statements, §23-90-121.
Annuities.
Guaranty association.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Anti-arson applications, §§23-88-201 to 23-88-210.
Antifraud assessment, §§23-100-104, 23-100-105.
Appeals.
Property and casualty insurance guaranty.
Rulings of commissioner, §23-90-123.
Rural risk underwriting association.
Applicants for policy, persons insured under plan and others affected by plan may appeal to commissioner, §23-88-309.
Arkansas rural risk underwriting association, §§23-88-301 to 23-88-309.
Arson.
Anti-arson applications, §§23-88-201 to 23-88-210.

INSURANCE —Cont'd
Assessments.
Life and health insurance guaranty association.
Assessment of member insurers, §23-96-115.
Property and casualty insurance guaranty.
Accounting for and repayment of assessments, §23-90-114.
Claims, §23-90-112.
Taxation.
Credit against taxes, §23-90-119.
Rural risk underwriting association.
Governing board empowered to make, §23-88-306.
Assigned risk.
Casualty insurance.
Eligibility for automobile liability insurance through automobile liability assigned risk plan, §23-89-307.
Assignments.
Life and health insurance guaranty association.
Assignment rights, §23-96-114.
Associations.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Attorneys at law.
Legal insurance, §§23-91-201 to 23-91-227.
Benefits.
Casualty insurance.
Exclusion of benefits, §23-89-205.
Minimums, §23-89-201.
Payments under coverage, §23-89-208.
Reimbursement.
Insurers' rights of reimbursement, §23-89-207.
Life and health insurance guaranty association.
Assignment or subrogation of rights, §23-96-114.
Liability, §23-96-114.
Minimum basic benefit policies, §23-98-106.
Certificates of authority.
Property and casualty insurance guaranty.
Suspension or revocation, §23-90-113.
Claims.
Property and casualty insurance guaranty.
Applicability of chapter, §23-90-111.

INSURANCE —Cont'd
Claims —Cont'd
Property and casualty insurance guaranty —Cont'd
Estimation of amount needed to pay claims, §23-90-112.
Notification of insureds, §23-90-111.
Payment, §23-90-115.
Covered claims, §23-90-115.
Estimation of amount needed to pay claims, §23-90-112.
Right of recovery, §23-90-117.
Commissioner of insurance.
Choice of health care providers by patients.
Enforcement of any willing provider laws, §23-99-803.
Continuing care providers, §§23-93-101 to 23-93-114.
Life and health insurance guaranty association.
Duties.
Generally, §23-96-118.
Examination of association, §23-96-109.
Insolvencies or impairments.
Detection and prevention, §23-96-117.
Powers.
Generally, §23-96-118.
Regulation by commissioner, §23-96-109.
Supervision of association, §23-96-109.
Minimum basic benefit policies.
Approval of forms and rates, §23-98-110.
Defined, §23-98-102.
Rules and regulations.
Notice and hearing before adoption, §23-98-103.
Risk retention and purchasing groups.
Administrative and procedural authority regarding, §23-94-212.
Defined, §23-94-203.
Rules and regulations, §23-94-215.
Risk-sharing plans for property and casualty insurance, §§23-95-101 to 23-95-108.
Construction, §23-95-102.
Governing board, §23-95-103.
Information of individuals, §23-95-106.
Liability, §23-95-107.
Plan for coverage.
Contents, §23-95-105.
Required, §23-95-104.
Purpose, §23-95-101.

INSURANCE —Cont'd
Commissioner of insurance —Cont'd
Risk-sharing plans for property and casualty insurance —Cont'd
Rules and regulations, §23-95-108.
Rural risk underwriting association.
Certification of aggregate net direct property insurance premiums written on property by members, §23-88-308.
Definition of commissioner, §23-88-302.
Plan.
Submission to commissioner, §23-88-305.
Rules and regulations, §23-88-308.
Title insurance.
Examination of books and records of insurers, §23-103-406.
Rules promulgation, §23-103-415.
Conflicts of interest.
Property and casualty insurance guaranty.
Advisory association.
Members may enter into contracts, §23-90-110.
Construction and interpretation.
Risk-sharing plans for property and casualty insurance.
Effect upon prior laws, §23-95-102.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Damages.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Debts.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Definitions.
Amusement ride and amusement attraction safety insurance, §23-89-502.
Anti-arson applications, §23-88-202.
Casualty insurance.
Cancellation of policies, §23-89-301.
Uninsured motor vehicles, §23-89-401.
Legal insurance, §23-91-203.
Life and health insurance guaranty association, §23-96-104.
Minimum basic benefit policies, §23-98-102.
Multiple employer trust and self-insured plans, §23-92-201.

INSURANCE —Cont'd
Definitions —Cont'd
Property and casualty insurance guaranty, §23-90-103.
Risk retention and purchasing groups, §23-94-203.
Rural risk underwriting association, §23-88-302.
Uninsured motor vehicles, §23-89-401.
Dental point of service option.
Health insurance carriers, §§23-99-601 to 23-99-608.
Earthquake insurance.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.
Examinations.
Risk retention and purchasing groups.
Foreign risk retention groups, §23-94-205.
Eye care providers.
Health insurance.
Primary eye care providers, §§23-99-301 to 23-99-305.
Fees.
Criminal investigation division trust fund act, §§23-100-104, 23-100-105.
Fire insurance.
Policies.
Valued policy law, §23-88-101.
Funds.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Guaranty.
Property and casualty insurance guaranty, §§23-90-101 to 23-90-123.
Guaranty association.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Hearings.
Risk-sharing plans for property and casualty insurance.
Availability of any amount or kind of insurance, §23-95-104.
Immunity.
Life and health insurance guaranty association, §23-96-108.
Risk-sharing plans for property and casualty insurance.
Commissioner, representatives or any plan, its participants or employees, §23-95-107.
Income withholding.
Minimum basic benefit policies.
Payroll deduction, §23-98-108.

INSURANCE —Cont'd
Injunctions.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Risk retention and purchasing groups.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Insolvency.
Life and health insurance guaranty association.
Insolvent insurers, §23-96-111.
Authority of association, §23-96-113.
Detection and prevention of impairments, §23-96-117.
Distributions of ownership rights, §23-96-119.
Installment contracts.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Investigations.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Legal insurance, §§23-91-201 to 23-91-227.
Liabilities.
Casualty insurance.
Tort liability.
Retention, §23-89-206.
Property and casualty insurance guaranty.
Insurers, §23-90-120.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Risk-sharing plans for property and casualty insurance.
Immunity.
Commissioner, representative or plan or its participants, §23-95-107.
Rural risk underwriting association.
Liability of participants in plan, §23-88-307.
Licenses.
Risk retention and purchasing groups.
Agents or brokers, §§23-94-211, 23-94-213.
Title insurance act, §§23-103-401 to 23-103-417.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.

INSURANCE —Cont'd
Loans.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.
Mental health.
Health insurance policies.
Required coverage, §§23-99-501 to 23-99-512.
Minimum basic benefit policies, §§23-98-101 to 23-98-111.
Motor vehicles.
Bodily injury minimum coverage limits, §23-89-403.
Extraterritorial provisions.
Liability insurance coverage, §23-89-212.
Proof-of-insurance card.
Issued to insured, §23-89-213.
Stepdowns.
Prohibited, §23-89-214.
Total loss settlements, §23-89-211.
Underinsured motorists, §23-89-209.
Multiple employer trust and self-insured plans.
Bonds, surety.
Amount, §23-92-204.
Cancellation, §23-92-204.
Required, §23-92-204.
Definitions, §23-92-201.
Records.
Access, §23-92-207.
Confidential information, §23-92-207.
Maintenance, §23-92-207.
Registration.
Bonds, surety, §23-92-204.
Certificate of registration.
Application, §23-92-203.
Issuance, §23-92-203.
Renewal, §23-92-203.
Required, §23-92-203.
Suspension or revocation, §23-92-203.
Required, §23-92-101.
Time for registration, §23-92-101.
Third party administrator.
Collections by, §23-92-206.
Compensation, §23-92-208.
Defined, §23-92-201.
Deposits and withdrawals, §23-92-206.
Fiduciary capacity, §23-92-206.
Payment of claims and return of premiums.
Presumptions, §23-92-205.

INSURANCE —Cont'd
Multiple employer trust and self-insured plans —Cont'd
Third party administrator —Cont'd
Payments of premiums to.
Presumptions, §23-92-205.
Updating of lists of trusts and plans, §23-92-203.
Written agreement required, §23-92-202.
Newborn infants.
Coverage included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
No-fault insurance.
First party coverage.
Required coverage, §23-89-202.
Notice.
Casualty insurance.
Cancellation of policies, §§23-89-304, 23-89-306.
Nonrenewal of policies, §§23-89-305, 23-89-306.
Minimum basic benefit policies, §23-98-108.
Property and casualty insurance guaranty.
Claims.
Insureds to be notified, §23-90-111.
Risk retention and purchasing groups.
Foreign risk retention groups.
Notice to purchasers, §23-94-205.
Purchasing groups.
Requirements, §23-94-208.
Penalties.
Amusement ride and amusement attraction safety insurance.
Operation without safety inspection and insurance, §23-89-504.
Risk retention and purchasing groups.
Foreign risk retention groups, §23-94-205.
Prepaid legal insurance, §§23-91-201 to 23-91-227.
Privilege taxes.
Risk retention groups, §23-94-210.
Products liability.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Professional employer organizations, §§23-92-401 to 23-92-419.
Property insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
INSURANCE —Cont'd
Purchasing groups.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Railroads.
Casualty insurance.
Railroad accidents not to be considered in automobile insurance, §23-89-302.
Records.
Life and health insurance guaranty association.
Open records, §23-96-109.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Reports.
Legal insurance.
Annual report, §23-91-215.
Exempt persons, §23-91-206.
Public documents, §23-91-227.
Life and health insurance guaranty association.
Board of directors.
Annual report, §23-96-109.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Property and casualty insurance guaranty.
Advisory association, §23-90-109.
Residential earthquake insurance.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.
Rules and regulations.
Creditor-placed insurance, §23-101-114.
Criminal investigation division trust fund, §23-100-106.
Minimum basic benefit policies.
Notices and hearing before adoption, §23-98-103.
Property and casualty insurance guaranty.
Promulgation of rules by commissioner, §23-90-122.
Risk retention and purchasing groups.
Commissioner, §23-94-215.
Risk-sharing plans for property and casualty insurance.
Commissioner to promulgate, §23-95-108.
Rural risk underwriting association.
Commissioner's rules and regulations, §23-88-308.
Secure transactions.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

INSURANCE —Cont'd
Service of process.
Risk retention and purchasing groups.
Foreign risk retention groups.
Designation of commissioner as agent, §23-94-205.
Purchasing groups.
Designation of commissioner as agent, §23-94-208.
Subrogation.
Casualty insurance.
Injured person subrogated to right of insured, §23-89-101.
Insurer making payment, §23-89-405.
Life and health insurance guaranty association.
Subrogation rights, §23-96-114.
Underinsured motorists, §23-89-209.
Taxation.
Legal insurance.
Premiums, §23-91-226.
Life and health insurance guaranty association.
Exemption, §23-96-109.
Property and casualty insurance guaranty.
Assessment as credit against taxes, §23-90-119.
Risk retention groups, §23-94-210.
Title insurance, §§23-103-401 to 23-103-417.
Torts.
Casualty insurance.
Retention of tort liability, §23-89-206.
Trusts and trustees.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Minimum basic benefit policies.
Qualified trust, §23-98-104.
Defined, §23-98-102.
Formation, §23-98-104.
Underwriters.
Rural risk underwriting association, §§23-88-301 to 23-88-309.
Valued policy law.
Property insurance, total loss by fire or natural disaster, §23-88-101.

INSURANCE COMPANIES.
Rural risk underwriting association.
Insurer, §23-88-302.
Title insurance, §§23-103-401 to 23-103-417.
Unfair competition and trade practices.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

INSURANCE FRAUD.
Criminal investigation division.
Trust fund, §§23-100-101 to 23-100-107.
Creation, §23-100-103.
Fees, §§23-100-104, 23-100-105.
Insurers' payment extensions, §23-100-102.
Rules and regulations, §23-100-106.
Title, §23-100-101.
Vouchers, §23-100-107.
Warrants, §23-100-107.

INSURANCE POLICIES.
Casualty insurance.
Cancellation, §§23-89-301, 23-89-303 to 23-89-308.
Grounds, §23-89-303.
No liability or cause of action against persons for information or statements relating to cancellation, §23-89-308.
Proof of mailing of notices, §23-89-306.
Time for notice, §23-89-304.
Definitions, §23-89-301.
First party coverage.
Required coverage, §23-89-202.
Grounds for cancellation of policy, §23-89-303.
Nonrenewal.
No liability or cause of action against persons for information or statements relating to cancellation or nonrenewal of policies, §23-89-308.
Notice, §23-89-305.
Proof of mailing of notices, §23-89-306.
Statement of grounds for nonrenewal, §23-89-305.
Passengers.
Coverage for passengers and others not occupying another vehicle, §23-89-204.
Rejection of coverage, §23-89-203.
Fire insurance.
Valued policy law, §23-88-101.
Life and health insurance guaranty association.
Coverage, §23-96-107.
Termination.
Nonpayment of premiums, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Notice to policyholder.
Disclaimer, §23-96-105.

INSURANCE POLICIES —Cont'd
Life and health insurance guaranty association —Cont'd
Notice to policyholder —Cont'd
Summary document describing general purpose and current limitations of chapter, §23-96-105.
Reissuance.
Terminated coverage, §23-96-121.
Minimum basic benefit policies, §§23-98-101 to 23-98-111.
Applicability of provisions, §23-98-105.
Benefits, §23-98-106.
Commissioner.
Approval of forms and rates, §23-98-110.
Defined, §23-98-102.
Rules and regulations.
Notice and hearing before adoption, §23-98-103.
Cost control.
Managed care and cost control provisions, §23-98-109.
Coverage, §23-98-106.
Disclosure requirements, §23-98-107.
Definitions, §23-98-102.
Disclosure requirements, §23-98-107.
Findings of legislature, §23-98-101.
Forms.
Approval, §23-98-110.
Issuance authorized, §23-98-105.
Disclosure requirements, §23-98-107.
Legislative findings, §23-98-101.
Managed care and cost control provisions, §23-98-109.
Newborn infants.
Coverage, §23-98-106.
Notice, §23-98-108.
Payroll deductions, §23-98-108.
Premiums.
Approval of rates, §23-98-110.
Records.
Requirements for insurers, §23-98-111.
Reports.
Requirements for insurers, §23-98-111.
Rules and regulations.
Notices and hearing before adoption, §23-98-103.
Trusts.
Qualified trust, §23-98-104.
Defined, §23-98-102.
Formation, §23-98-104.

INSURANCE POLICIES —Cont'd
Minors.
Coverage of newborn infants included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
Newborn infants.
Coverage included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
Property and casualty insurance guaranty.
Issuance.
New or renewal policies, §23-90-118.
Property insurance.
Valued policy law, §23-88-101.
Rural risk underwriting association.
Appeals, §23-88-309.

INSURANCE PREMIUMS.
Life and health insurance guaranty association.
Insolvent insurers.
Premiums due after an order of liquidation, §23-96-120.
Nonpayment of premiums.
Effect, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Minimum basic benefit policies.
Approval of rates, §23-98-110.
Rural risk underwriting association.
Net direct written premiums.
Certification of aggregate by commissioners, §23-88-308.
Defined, §23-88-302.
Taxes.
Life and health insurance guaranty association.
Member insurers.
Credits, §23-96-115.

INSURANCE PRODUCERS AND SERVICE REPRESENTATIVES.
Agents.
Risk retention and purchasing groups, §§23-94-211, 23-94-213.
Title insurance.
Generally, §§23-103-401 to 23-103-417.
Brokers.
Risk retention and purchasing groups, §§23-94-211, 23-94-213.
Licenses, §§23-94-211, 23-94-213.

INVENTORY.
Title insurance.
Inventory of policy forms and numbers, §23-103-410.

INVESTIGATIONS.
Continuing care providers.
Grounds for investigation, §23-93-114.
Powers of commissioner, §23-93-114.
Greyhound racing.
Officers, directors and shareholders of franchise holders, §§23-111-405, 23-111-409.
Horse racing.
Racing commission, §23-110-413.
Insurance.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.

INVESTMENTS.
Legal insurance.
Assets, §23-91-217.
Lotteries.
Proceeds, §23-115-801.

J

JURISDICTION.
Lotteries.
Retailers, closure of business by commission.
Judicial relief, §23-115-609.

L

LABORATORIES.
Lotteries.
Testing and evaluation of games, §23-115-205.

LAW ENFORCEMENT OFFICERS.
Used motor vehicle buyers protection.
Disbursement of fines, §23-112-603.

LEASES.
Motor vehicles.
Lessors.
Unlawful practices, §23-112-404.

LEGAL INSURANCE, §§23-91-201 to 23-91-227.

LETTERS OF CREDIT.
Lottery vendors, §23-115-502.
Professional employer organizations.
Letter of credit in lieu of bond, §23-92-408.

LICENSES AND PERMITS.
Bingo.
Charitable bingo and raffles enabling act.
Authorized organizations licensing, §§23-114-301 to 23-114-307.
Charitable bingo and raffles enabling act, §§23-114-301 to 23-114-307.
Continuing care providers, §§23-93-201 to 23-93-207.
Legal insurance.
Agents, §23-91-219.
Lotteries.
Retailers, §§23-115-601 to 23-115-604.
Professional employer organizations.
Employer service assurance organizations, §23-92-415.
Fees, §23-92-407.
Issuance, §23-92-410.
Requirement, §23-92-404.
Revocation or suspension, §23-92-410.
Transfer or assignment, §23-92-406.
Raffles.
Charitable bingo and raffles enabling act.
Authorized organizations licensing, §§23-114-301 to 23-114-307.

LIENS.
Continuing care providers.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Lotteries.
Withholding from prizes.
Debtors owing money to state, list of name constituting lien, §23-115-1004.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION, §§23-96-101 to 23-96-121.
Accounts and accounting.
Accident and health insurance account.
Maintenance by association, §23-96-109.
Life insurance and annuity account.
Maintenance by association, §23-96-109.
Advertisement of act in insurance sales.
Prohibited, §23-96-105.
Appearance and intervention before courts.
Power, §23-96-110.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
—Cont'd
Applicability of chapter, §23-96-103.
Assessments.
Member insurers, §23-96-115.
Assignment of rights, §23-96-114.
Benefits, §23-96-114.
Board of directors, §23-96-109.
Assessment of member insurers, §23-96-115.
Impairments or insolvencies.
Detection and prevention.
Procedure, §23-96-117.
Citation of chapter, §23-96-101.
Commissioner.
Insolvencies or impairments.
Detection and prevention, §23-96-117.
Powers and duties, §23-96-118.
Supervision and regulation, §23-96-109.
Companies.
Board of directors, §23-96-109.
Assessment of member insurers, §23-96-115.
Impairments or insolvencies, detection and prevention.
Procedure, §23-96-117.
Impaired insurers, §23-96-111.
Authority of association, §23-96-113.
Detection and prevention of impairments, §23-96-117.
Distributions of ownership rights, §23-96-119.
Insolvent insurers, §23-96-112.
Authority of association, §23-96-113.
Detection and prevention of insolvencies, §23-96-117.
Distributions of ownership rights, §23-96-119.
Premiums due after an order of liquidation, §23-96-120.
Member insurers, §23-96-109.
Plan of operation.
Compliance, §23-96-116.
Construction and interpretation.
Applicability of chapter, §23-96-103.
Purpose of chapter, §23-96-102.
Scope of chapter, §23-96-106.
Created, §23-96-109.
Definitions, §23-96-104.
Delegation of authority.
Plan of operation, §23-96-116.
Disclaimer.
Notice to policyholder, §23-96-105.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
—Cont'd
Domestic life or accident and health insurer.
Authority to exercise powers of, §23-96-110.
Duties.
Generally, §23-96-110.
Examination by commissioner, §23-96-109.
Functions.
Generally, §23-96-109.
General provisions, §§23-96-101 to 23-96-121.
Immunity from liability, §23-96-108.
Impaired insurers, §23-96-111.
Authority of association, §23-96-113.
Detection and prevention of impairments, §23-96-117.
Distributions of ownership rights, §23-96-119.
Insolvent insurers, §23-96-112.
Authority of association, §23-96-113.
Detection and prevention of insolvencies, §23-96-117.
Distributions of ownership rights, §23-96-119.
Premiums due after an order of liquidation, §23-96-120.
Legislative declaration.
Purpose of chapter, §23-96-102.
Liability.
Benefits, §23-96-114.
Immunity from liability, §23-96-108.
Nonpayment of premiums.
Termination of association's obligations, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Meetings.
Open meetings, §23-96-109.
Member insurers, §23-96-109.
Assessments, §23-96-115.
Plan of operation.
Compliance, §23-96-116.
Tax credits, §23-96-115.
Notice to policyholder, §23-96-105.
Plan of operation, §23-96-116.
Policies.
Coverage, §23-96-107.
Termination.
Nonpayment of premiums, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Notice to policyholder.
Disclaimer, §23-96-105.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION —Cont'd
Policies —Cont'd
Notice to policyholder —Cont'd
Summary document describing general purpose and current limitations of chapter, §23-96-105.
Reissuance.
Terminated coverage, §23-96-121.
Powers.
Exercisable through board of directors, §23-96-109.
Generally, §23-96-110.
Premiums.
Insolvent insurers.
Premiums due after an order of liquidation, §23-96-120.
Nonpayment of premiums.
Effect, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Premium taxes.
Member insurers.
Credits, §23-96-115.
Purpose of chapter, §23-96-102.
Records.
Open records, §23-96-109.
Reinsurance contracts.
Assumption by association, §23-96-110.
Reports.
Board of directors.
Annual report, §23-96-109.
Scope of chapter, §23-96-106.
Subrogation rights, §23-96-114.
Tax credits.
Member insurers, §23-96-115.
Tax exemption, §23-96-109.
Title of chapter, §23-96-101.

LIQUIDATION.
Legal insurance.
Companies, §23-91-223.

LOANS.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

LOBBYISTS AND LOBBYING.
Lottery commission.
Employees of commission.
Restrictions upon leaving employment, §23-115-303.
Prohibitions, §23-115-203.

LOCAL GOVERNMENTS.
Lotteries.
Local government authority preempted, §23-115-406.

LONG-TERM CARE FACILITIES AND ADMINISTRATORS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Continuing care providers, §§23-93-101 to 23-93-207.
Insurance.
Long-term care insurance generally, §§23-97-301 to 23-97-321.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

LONG-TERM CARE INSURANCE, §§23-97-301 to 23-97-321.
Acceleration of death benefits, §23-97-315.
Associations.
Defined, §23-97-304.
Filing requirements, §23-97-305.
Citation of act, §23-97-301.
Claims processing.
Denial of claims, §23-97-316.
Construction of act.
Purpose, §23-97-302.
Scope, §23-97-303.
Short title, §23-97-301.
Contracts or policies of insurance.
Cancellation restrictions, §23-97-307.
Delivery of policy and summary, §23-97-314.
Exclusions, reductions and limitations, §23-97-314.
Incontestability period, §23-97-318.
Nonforfeiture benefits, §23-97-319.
Offers of policy or contract.
Compliance with act, §23-97-317.
Outline of coverage, §23-97-312.
Policy, defined, §23-97-304.
Primary benefits and coverages, §23-97-313.
Right to return, §23-97-311.
Summary of policy, §23-97-314.
Death benefits.
Acceleration of, §23-97-315.
Definitions, §23-97-304.
Preexisting condition, §23-97-308.
Denial of claims, §23-97-316.

LONG-TERM CARE INSURANCE —Cont'd
Disclosure standards, §23-97-307.
Exclusions, reductions and limitations, §23-97-314.
Free look, §23-97-311.
Group long-term care insurance.
Cancellation restrictions, §23-97-307.
Certificate, defined, §23-97-304.
Contents of certificate, §23-97-313.
Defined, §23-97-304.
Extraterritorial jurisdiction, §23-97-306.
Free look at certificate, §23-97-311.
Incontestability period, §23-97-318.
Nonforfeiture benefits, §23-97-319.
Offering to resident in state under group policy issued in another state, §23-97-306.
Outline of coverage, §§23-97-312, 23-97-313.
Right to return certificate, §23-97-311.
Incontestability period, §23-97-318.
Loss ratio standards, §23-97-310.
Nonforfeiture benefits, §23-97-319.
Penalties, §23-97-321.
Performance standards, §23-97-307.
Preexisting condition, §23-97-308.
Prior hospitalization or institutionalization, §23-97-309.
Public policy, §23-97-302.
Rulemaking authority, §23-97-320.
Scope of act, §23-97-303.
Title of act, §23-97-301.
Violations of act, §23-97-321.

LOTTERIES, §§23-115-101 to 23-115-1102.
Arkansas lottery commission.
Administrative orders, appealing, §23-115-209.
Audits, §23-115-206.
Background checks, §23-115-203.
Borrowing from state, §23-115-803.
Claims against commission, §23-115-208.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Confidential information, §23-115-404.
Created, §23-115-201.
Director, §§23-115-301, 23-115-302.
Employees of commission, §§23-115-301 to 23-115-308.
Administrative statewide information system, participation, §23-115-308.
Background checks, §23-115-303.

LOTTERIES —Cont'd
Arkansas lottery commission —Cont'd
Employees of commission —Cont'd
Bond requirement, §23-115-303.
Conflicts of interest prohibited, §23-115-303.
Expansion pool for additional employees, §23-115-307.
Public employees' retirement system participation, §23-115-304.
Restrictions upon leaving employment, §23-115-303.
Retailer conflicts, §23-115-601.
Salaries, §23-115-305.
Special allowances, §23-115-306.
Vendor conflicts, §23-115-501.
Internal auditor.
Duties, §23-115-211.
Internal controls and oversight functions, §23-115-206.
Laws not applicable, §23-115-211.
Lottery retailer advisory board, §23-115-204.
Meetings, §23-115-202.
Members, §23-115-202.
Powers, §23-115-205.
Prize ineligibility, §23-115-403.
Proceeds, §§23-115-801 to 23-115-803.
Procurements, §23-115-701.
Qualifications of members, §23-115-203.
Removal of members, §23-115-210.
Report to legislative oversight committee, §23-115-206.
Director, §23-115-302.
Retailer conflicts of interest, §23-115-601.
Rulemaking, §§23-115-207, 23-115-208.
Verification of validity of tickets, §23-115-403.
Sovereign immunity, §23-115-208.
Vendor conflicts of interest, §23-115-501.
Audits and auditors.
Arkansas lottery commission, §§23-115-206, 23-115-212.
Presence of auditor to determine accuracy of results and winner, §23-115-403.
Borrowing from state, §23-115-803.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Confidential records, §23-115-404.
Agreements with United States government and enforcement or regulatory agencies, §23-115-405.

LOTTERIES —Cont'd
Confidential records —Cont'd
Withholding from prizes.
Debtors owing money to state.
Confidential information provided to claimant agency, §23-115-1005.
Conflict of laws.
Enforcement provisions, §23-115-904.
Contracts.
Participation by female-owned and minority-owned businesses, §23-115-401.
Vendors, §§23-115-501 to 23-115-504.
Cooperative agreements with United States government and enforcement or regulatory agencies, §23-115-405.
Debtors owing money to state, prize withholding, §§23-115-1001 to 23-115-1006.
Definitions, §23-115-103.
Effect of provisions on other wagering laws, §23-115-409.
Eligibility to win, §23-115-402.
Enforcement provisions, §§23-115-901 to 23-115-904.
Female-owned businesses, participation, §23-115-401.
Fidelity fund, §23-115-603.
Financial records and reporting.
Commission internal controls and oversight functions, §23-115-206.
Internal auditor, duties of, §23-115-212.
Fiscal impact statement.
Defined, §23-115-103.
General assembly lottery bills, §23-115-104.
Fraud.
Arkansas lottery commission oversight, §23-115-206.
False statement by retailer on license application, §23-115-903.
Lottery fraud, §23-115-902.
Penalties, §23-115-902.
Prize not to be awarded on certain tickets, §23-115-403.
Gifts from vendors, §23-115-501.
Income tax, prizes subject to, §23-115-403.
Legislative oversight committee, §§23-115-1101, 23-115-1102.
Duties of internal auditor, §23-115-212.
Reports to committee, §23-115-206.
Director, §23-115-302.
Legislative purpose, §23-115-102.

LOTTERIES —Cont'd
Local government authority preempted, §23-115-406.
Lottery fraud, §23-115-902.
Lottery retailer advisory board, §23-115-204.
Major procurement contracts.
Generally, §23-115-701.
Minority-owned businesses, participation, §23-115-401.
Minors purchasing tickets.
Penalties, §23-115-901.
Prohibition, §23-115-402.
Retailer knowingly allowing, §23-115-207.
Multidraw screen-based lottery games.
Defined, §23-115-103.
Prohibition, §23-115-411.
Multiple claimants to prize, §23-115-403.
Operation of lottery generally, §§23-115-401 to 23-115-411.
Penalties for violations, §§23-115-901 to 23-115-904.
Prizes.
Eligibility to win, §23-115-402.
Generally, §23-115-403.
Portion of proceeds available as prizes, §23-115-801.
Withholding from prizes.
Debtors owing money to state, §§23-115-1001 to 23-115-1006.
Proceeds, §§23-115-801 to 23-115-803.
Accounting, §23-115-801.
Borrowing from state, §23-115-803.
Certification of amount needed to fund scholarships, §23-115-801.
Deposit into trust accounts, §23-115-801.
Fiduciary duties, §23-115-605.
Investment, §23-115-801.
Property of commission, §23-115-801.
Scholarship shortfall reserve trust account, §23-115-802.
Procurement contracts.
Bid or proposal requirements, §23-115-501.
Generally, §23-115-701.
Reports.
Arkansas lottery commission.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Retailers.
Administrative orders of commission, appealing, §23-115-209.
Application fee, §23-115-601.

LOTTERIES —Cont'd
Retailers —Cont'd
Arkansas lottery commission power to act as, §23-115-205.
Background checks, §23-115-601.
Bonding, §23-115-603.
Closure of business by commission.
Administrative hearing, §23-115-608.
Authority for, §23-115-607.
Grounds, §23-115-607.
Judicial relief, §23-115-609.
License discipline, §23-115-611.
Notice to public, §23-115-610.
Procedures, §23-115-610.
Rules promulgation to implement provisions, §23-115-612.
Compensation, §23-115-601.
Conflicts of interest, §23-115-601.
Fidelity fund fee, §23-115-603.
Fiduciary duties, §23-115-605.
Generally, §§23-115-601 to 23-115-612.
Licenses.
Assignment prohibited, §23-115-602.
Cancellation, suspension or revocation, §23-115-604.
Closure of business by commission as grounds, §23-115-611.
Sales to minors, §23-115-901.
False statement on license application, §23-115-903.
Required, §23-115-601.
Lottery retailer advisory board, §23-115-204.
Minors purchasing tickets, §§23-115-207, 23-115-402.
Penalties, §23-115-901.
Qualification criteria, §23-115-601.
Rent based on percentage of retail sales.
Compensation from lottery considered in computing rental payment, §23-115-606.
Restriction on sale of tickets, §23-115-402.
Small retailer participation, §23-115-601.
Scholarship shortfall reserve trust account, §23-115-802.
Tickets.
Restriction on sale, §23-115-402.
Rulemaking, §23-115-207.
Rules regarding verification, §23-115-403.
Time for claiming prize, §23-115-403.
Title of act, §23-115-101.
Trust fund from sale of tickets or shares, §23-115-605.
Deposit of proceeds, §23-115-801.
LOTTERIES —Cont'd
Trust fund from sale of tickets or shares —Cont'd
Scholarship shortfall reserve trust account, §23-115-802.
Unclaimed prizes, §23-115-403.
Vendors, §§23-115-501 to 23-115-504.
Background checks, §23-115-501.
Bid or proposal requirements, §23-115-501.
Bond or other financial security, §23-115-502.
Cancellation or suspension of contracts, §23-115-503.
Disclosures required, §23-115-501.
Gift prohibitions, §23-115-501.
Political contributions prohibited, §23-115-504.
Video lotteries, prohibition, §§23-115-407, 23-115-408.
Violations, §§23-115-901 to 23-115-904.
Withholding from prizes, §23-115-403.
Debtors owing money to state, §§23-115-1001 to 23-115-1006.
Amount of debt collectible from prize, §23-115-1004.
Applicability of provisions, §23-115-1006.
Confidential information provided to claimant agency, §23-115-1005.
Definitions, §23-115-1002.
Legislative intent, §23-115-1001.
List of names to commission, §23-115-1004.
Notice, §23-115-1004.
Payment of prize to claimant agency, §23-115-1004.
Priority of liens, §23-115-1004.
Supplemental nature of collection remedy, §23-115-1003.
Income tax withholding.
Powers of lottery commission, §23-115-205.

M

MAIL.
Portable electronics insurance.
Notice to enrolled customer.
Registered mail, §23-88-506.

MANAGED HEALTH PLANS.
Grievance systems and quality assessment and improvement systems, §§23-99-701 to 23-99-706.
Benefits offered, inapplicability of director's regulatory authority, §23-99-705.

MANAGED HEALTH PLANS —Cont'd
Grievance systems and quality assessment and improvement systems —Cont'd
Definitions, §23-99-702.
Grievance system, §23-99-703.
Insurance exempted from provisions, §23-99-705.
Legislative findings, §23-99-701.
Power to implement and enforce provisions, §23-99-706.
Quality assessment and improvement systems, §23-99-704.

MANDAMUS.
Continuing care providers.
Enforcement of chapter, §23-93-104.

MANUFACTURERS.
Recreational vehicle franchises, §§23-112-1001 to 23-112-1023.

MASTECTOMIES.
Health insurance.
Required coverage, §23-99-405.

MATERNITY.
Health insurance.
Obstetrical and gynecological services.
Required coverage, §23-99-406.
Required coverage, §23-99-404.

MEDIATION.
Recreational vehicle franchises.
Demand before bringing suit, §23-112-1022.

MENTAL HEALTH.
Community mental health centers.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance, §§23-99-501 to 23-99-512.
Applicability, §23-99-509.
Definitions, §23-99-503.
Enforcement, §23-99-511.
Exclusions, §23-99-504.
Exemptions.
Increased costs, §23-99-505.
Intent of state, §23-99-502.
Medical necessity, §23-99-507.
Out-of-network benefits, §23-99-512.
Parity requirements, §23-99-506.
Provisions permitted, §23-99-508.
Required coverage, §§23-99-501 to 23-99-512.

MENTAL HEALTH —Cont'd
Health insurance —Cont'd
Rules and regulations, §23-99-510.
Short title, §23-99-501.
Insurance.
Health insurance.
Required coverage, §§23-99-501 to 23-99-512.
Rules and regulations.
Health insurance coverage, §23-99-510.

MENTAL HEALTH PARITY ACT.
Health insurance required coverage, §§23-99-501 to 23-99-512.

MINORITIES.
Lotteries.
Participation by minority-owned businesses, §23-115-401.

MOON WALKS.
Insurance for amusements, §§23-89-501 to 23-89-518.

MOTORCYCLES.
Events.
Special motorcycle events, §§23-112-801 to 23-112-806.
Sales.
Special motorcycle events, §§23-112-801 to 23-112-806.
Special motorcycle events, §§23-112-801 to 23-112-806.
Definitions, §23-112-802.
Economic impact.
Determination of significant positive economic impact, §23-112-804.
Presumption of significant positive economic impact, §23-112-806.
Statement of estimated positive economic impact, §23-112-803.
Established and ongoing events, §23-112-806.
Exemptions, §23-112-804.
Legislative findings, §23-112-801.
Out-of-state dealers and manufacturers.
Temporary permits to participate in events, §23-112-805.
Permits.
Out-of-state dealers and manufacturers.
Temporary permits to participate in events, §23-112-805.
Waiver of relevant market area provisions and rules as to dealers in contiguous counties, §23-112-805.

MOTOR VEHICLE DEALERS.
Appeals.
Chargebacks, protest of, §23-112-313.
Auto auction fees.
Salvage-titled or parts-only titled vehicles, §23-112-614.
Bond.
Application for license accompanied by, §23-112-103.
Compensation for warranty work, §23-112-313.
Contract for sale.
Delivery prior to sale, §23-112-316.
Damage to motor vehicles while in transit.
Delivery to dealer.
Damage after.
Disclosure to consumer, §23-112-706.
Damage prior to.
Computing time, §23-112-704.
Disclosure to consumer, §23-112-705.
Failure to repair, §23-112-703.
Notice, §23-112-702.
When accomplished, §23-112-701.
Indemnification of franchised dealers.
Manufacturer required to indemnify, §23-112-707.
Definitions, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
Delivery, preparation, warranty obligations.
Manufacturers, distributors, second-stage manufacturers, importers or converters, §23-112-103.
Fees.
Auto auction fees.
Salvage-titled or parts-only titled vehicles, §23-112-614.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Financing, purchase or sale.
Contract for sale.
Delivery prior to sale, §23-112-316.
Licenses.
Addition of new motor vehicle dealers, §23-112-311.
Appeals.
Chargebacks, protest of, §23-112-313.
Denial, revocation or suspension, §23-112-506.

MOTOR VEHICLE DEALERS —Cont'd
Licenses —Cont'd
Applications, §23-112-302.
Denial, §23-112-501.
Fees, §23-112-303.
Bond.
Application accompanied by, §23-112-103.
Brokers.
Acting as broker prohibited, §23-112-406.
Business restructuring, §23-112-304.
Buyer referral services, plans, clubs, etc., §23-112-406.
Change of employer, §23-112-305.
Factory representative and distributor representative, §23-112-305.
Salespersons, §23-112-306.
Definitions, §23-112-103.
Exhaustion of remedies required, §23-112-507.
Expiration, §23-112-307.
Factory representative and distributor representative, §23-112-305.
Franchise, termination, cancellation, etc., §23-112-403.
Hearings, §§23-112-506 to 23-112-509.
Appeals, §23-112-506.
Call for hearing, §23-112-502.
Conduct, §23-112-504.
Decisions, §23-112-505.
Exhaustion of remedies required, §23-112-507.
Location, §23-112-503.
Notice, §23-112-503.
Orders of commission, §23-112-505.
Right to hearing, §23-112-501.
Rules of order or procedure, §23-112-508.
Summons, citation and subpoena, §23-112-509.
Issuance, §23-112-304.
Legislative declaration, §23-112-102.
Manufacturer's product or warranty liability, §23-112-310.
Name changes, §23-112-304.
Negative equity financing, §23-112-318.
Prohibited acts.
Dealers and salespersons, §23-112-402.
Manufacturers, distributors, etc., §23-112-403.
Reciprocity, §23-112-312.
Records to be maintained.
Applicants for licenses, §23-112-302.

MOTOR VEHICLE DEALERS —Cont'd
Licenses —Cont'd
Relocation of new motor vehicle dealer, §23-112-311.
Required, §23-112-301.
Exceptions, §23-112-318.
Revocation or suspension, §23-112-308.
Hearings, §23-112-501.
Monetary penalty in lieu of, §23-112-309.
Term, §23-112-307.
Unfair competition by manufacturer with dealer, §23-112-403.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Violations of provisions, §23-112-314.
Display of license, §23-112-105.
Injunctions, §23-112-104.
Prohibited acts, §§23-112-402, 23-112-403.
Warranty or recall agreements, §23-112-313.
Negative equity financing, §23-112-318.
New motor vehicles.
Delivery prior to sale, §23-112-316.
Motor vehicle event data recorders, §23-112-107.
Notice.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Recreational vehicle franchises, §§23-112-1001 to 23-112-1023.
Recreational vehicle special events, §§23-112-901 to 23-112-905.
Sales.
Contract for sale.
Delivery prior to sale, §23-112-316.
Salvage-titled or parts-only titled vehicles.
Auto auction fees, §23-112-614.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Special motorcycle events, §§23-112-801 to 23-112-806.
Unlawful practices, §23-112-402.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Contract for sale.
Delivery prior to sale, §23-112-613.

MOTOR VEHICLE DEALERS —Cont'd
Used motor vehicle buyers protection —Cont'd
Dealer's license.
Application, §23-112-607.
Issuance of license certificate, §23-112-609.
Display, §23-112-610.
Fees.
Licensed certificate fees, §23-112-608.
Recordkeeping requirements, §23-112-611.
Required, §23-112-606.
Delivery prior to sale, §23-112-613.
Disclosures, §23-112-613.
Printed advertisements, dealer requirements for, §23-112-610.
Service and handling fees, §23-112-617.
Warranties.
Compensation for warranty work, §23-112-313.
Manufacturer's product or warranty liability, §23-112-310.
Warranty or recall agreements, §23-112-313.

MOTOR VEHICLE EVENT DATA RECORDERS, §23-112-107.

MOTOR VEHICLE INSURANCE.
Bodily injury minimum coverage limits, §23-89-403.
Driver other than insured in accident.
Converting limits downward.
Prohibition on stepdowns, §23-89-214.
Extraterritorial provisions.
Liability insurance coverage, §23-89-212.
Liability insurance.
Defrauding secured creditor.
Unauthorized use of proceeds, §23-89-216.
Use of proceeds, notice to insured, §23-89-216.
When policy is considered primary policy, §23-89-215.
Proof-of-insurance card.
Issued to insured, §23-89-213.
Rental vehicles.
Prohibited acts by motor vehicle lessors, §23-112-404.
Safety responsibility.
College graduates.
Premium reduction for, §23-89-210.

MOTOR VEHICLE INSURANCE —Cont'd
Stepdowns.
Prohibited, §23-89-214.
Total loss settlements, §23-89-211.
Underinsured motorists, §23-89-209.
Set-offs or reduction of recovery, §23-89-403.
Uninsured motorists.
Casualty insurance.
Bodily injury coverage, §23-89-403.
Definition of uninsured motorist, §23-89-401.
Insurers' insolvency protection.
Applicability, §23-89-402.
Property damage coverage, §23-89-404.
Subrogation of insurer making payment, §23-89-405.

MOTOR VEHICLES.
Black boxes.
Motor vehicle event data recorders, §23-112-107.
Data recorders in new motor vehicles, §23-112-107.
Distributors.
Defined, §23-112-103.
Unlawful practices, §23-112-403.
Equipment.
Data recorders in new motor vehicles, §23-112-107.
Event data recorders in new motor vehicles, §23-112-107.
Leases.
Lessors.
Unlawful practices, §23-112-404.
Low speed vehicle.
Defined, §23-112-103.
Manufacturers.
Defined, §23-112-103.
Unlawful practices, §23-112-403.
Motor vehicle commission.
Bonds, surety, §23-112-202.
Composition, §23-112-201.
Creation, §23-112-201.
Definitions, §23-112-103.
Employees, §23-112-203.
Enforcement, §23-112-106.
Legislative intent, §23-112-102.
Motor vehicle commission fund.
Disposition, §23-112-205.
Oath of office of members, §23-112-202.
Office, §23-112-203.
Proceedings, §23-112-202.
Rules and regulations, §23-112-204.
Title of chapter.
Short title, §23-112-101.

MOTOR VEHICLES —Cont'd
New motor vehicles.
Motor vehicle event data recorders, §23-112-107.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Passengers.
Insurance.
Coverage for passengers and others not occupying another vehicle, §23-89-204.
Previously owned motor vehicles, §§23-112-601 to 23-112-617.
Recreational vehicle dealers, §§23-112-1001 to 23-112-1023.
Sales.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.

MP3 PLAYERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

MUNICIPALITIES.
Greyhound racing.
Racing meets.
Use of revenue derived from additional racing days, §23-111-515.
Lotteries.
Local government authority preempted, §23-115-406.

N

NO FAULT INSURANCE.
First party coverage.
Required coverage, §23-89-202.

NOTICE.
Continuing care providers.
Disclosure statements.
Deficiencies, §23-93-107.
Licenses.
Disciplinary actions, §23-93-205.
Greyhound racing.
Franchises to conduct races.
Elections, §23-111-304.
Horse racing.
Franchises to conduct horse races.
Elections, §23-110-304.
Continuing horse races in county.
Results of election, §23-110-306.
Racing meets.
Sunday racing.
Notice of election, §23-110-402.

NOTICE —Cont'd
Lotteries.
Retailers.
Closure of business by commission, §§23-115-607, 23-115-610.
Withholding from prizes.
Debtors owing money to state, §23-115-1004.
Motor vehicle dealers.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Motor vehicle liability insurance.
Unauthorized use of proceeds, notice to insured, §23-89-216.
Portable electronics insurance.
Termination by insurer, §23-88-506.
Property insurance.
Fire loss reporting act.
Notice regarding fire protection, §23-88-404.
Notice prior to expiration of policy, §23-88-105.
Recreational vehicle franchises.
Dealer agreement.
Termination, cancellation, nonrenewal, §23-112-1012.
Sale of business resulting in change of dealer ownership, §23-112-1015.
Risk retention and purchasing groups.
Foreign risk retention groups.
Notice to purchasers, §23-94-205.
Purchasing groups.
Requirements, §23-94-208.
Title insurance.
Notice of availability of closing protection, §§23-103-405, 23-103-413.
Underinsured motorists.
Rejection of coverage, §23-89-209.

NURSES.
Advanced practice nurses.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

NURSING HOMES.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

O

OATHS OR AFFIRMATIONS.
Charitable bingo and raffles.
Excise tax.
Filing of report to be made under oath, §23-114-602.
Horse racing.
Racing commission.
Oath of office of members, §23-110-201.
Lottery commission, §23-115-203.
Motor vehicles.
Motor vehicle commission.
Oath of office of members, §23-112-202.

OBSTETRICAL SERVICES.
Health insurance.
Required coverage, §23-99-406.

OCCUPATIONAL THERAPISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

OPTOMETRISTS.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

ORDERS.
Continuing care providers.
Cease and desist orders.
Enforcement of chapter, §23-93-104.

ORTHOTICS.
Health insurance consumer protection.
Coverage required, §23-99-417.

ORTHOTISTS, PROSTHETISTS AND PEDORTHISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

OSTEOPATHS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.

OSTEOPATHS —Cont'd
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

P

PARI-MUTUEL WAGERING.
Greyhound racing, §23-111-508.
Horse racing, §23-110-405.

PATIENT PROTECTION ACT.
Any willing provider law enforcement, §§23-99-801 to 23-99-803.
Generally, §§23-99-201 to 23-99-209.

PETITIONS.
Lottery commission.
Petition by member upon removal, §23-115-210.

PHARMACISTS AND PHARMACIES.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

PHYSICAL THERAPISTS.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

PHYSICIANS AND SURGEONS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance consumer protection.
Applications of providers.
Credentials of physician, §23-99-411.

PODIATRISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

POPULAR NAMES AND SHORT TITLES.
Any willing provider law, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.
Gag clauses, §23-99-407.
Lottery act, §§23-115-101 to 23-115-1102.
Mental health parity act, §§23-99-501 to 23-99-512.
Primary eye care provider act, §§23-99-301 to 23-99-305.
Professional employer recognition act, §§23-92-401 to 23-92-419.
Recreational vehicle franchise act, §§23-112-1001 to 23-112-1023.
Title insurance act, §§23-103-401 to 23-103-417.
Valued policy law, §23-88-101.

PORTABLE ELECTRONICS INSURANCE, §§23-88-501 to 23-88-507.
Cancellation policy, §23-88-503.
Changes in terms and conditions, §23-88-506.
Claims process.
Process for filing claim, §23-88-503.
Definitions, §23-88-501.
Disclosure requirements, §23-88-503.
Requirement for sale, §23-88-503.
Termination by insurer, §23-88-506.
Vendors.
Authorization to sell or offer, §23-88-504.
Billing a collecting charges, §23-88-504.
Changes in terms and conditions, §23-88-506.
Defined, §23-88-501.
Licensing.
Application process, §23-88-507.
Contents, §23-88-507.
License fees, §23-88-507.
Limited lines license, §§23-88-502, 23-88-505, 23-88-507.
Schedule of fees, §23-88-507.
Suspension or revocation of license, §23-88-505.
Registry of vendor locations.
Supervising entity to maintain, §23-88-502.

PORTABLE ELECTRONICS INSURANCE —Cont'd
Vendors —Cont'd
Unlicensed sales by representative and employee, §23-88-504.
Violation of provisions, §23-88-505.

PREEMPTION.
Lotteries.
Local government authority preempted, §23-115-406.

PREGNANCY.
Health insurance.
Required coverage, §§23-99-404, 23-99-406.

PREPAID LEGAL INSURANCE, §§23-91-201 to 23-91-227.

PRESCRIPTION DRUGS.
Health insurance.
Formulary for prescription drugs.
Procedure for exceptions, §23-99-409.

PRESUMPTIONS.
Motorcycles.
Special motorcycle events.
Economic impact, §23-112-806.

PRIMARY EYE CARE PROVIDER ACT, §§23-99-301 to 23-99-305.

PRINTING.
Charitable bingo and raffles.
Bingo faces and raffle tickets, §23-114-202.

PRIORITIES.
Lotteries.
Withholding from prizes, debtors owing money to state.
Priority of liens, §23-115-1004.
Motor vehicle liability insurance.
When policy is considered primary policy, §23-89-215.

PRISONS AND PRISONERS.
Lotteries.
Prisoners ineligible to win, §23-115-402.

PRIVILEGE TAXES.
Insurance.
Risk retention groups, §23-94-210.

PRIZES.
Charitable bingo and raffles, §23-114-408.

PRODUCTS LIABILITY.
Insurance.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

PRODUCTS LIABILITY —Cont'd
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

PROFESSIONAL EMPLOYER ORGANIZATIONS, §§23-92-401 to 23-92-419.
Bond required, §23-92-408.
Employer service assurance organizations, §23-92-415.
Client's rights and duties, §23-92-409.
Coemployment relationships, §23-92-409.
Confidential information, §23-92-413.
Construction of provisions.
Relationship to other laws, §23-92-403.
Controlling persons.
Changes in control, §23-92-406.
Duties, §23-92-405.
Deceptive practices, §23-92-411.
Definitions, §23-92-402.
Employer service assurance organizations.
Affidavit, §23-92-414.
Filing, §23-92-418.
Filing, §23-92-418.
Licenses, §23-92-415.
Permissible activities, §23-92-417.
Prohibited activities, §23-92-416.
Fees, §23-92-407.
Employer service assurance organization affidavit, §23-92-414.
Letter of credit in lieu of bond, §23-92-408.
Liability limitation, §23-92-409.
Licenses.
Employer service assurance organizations, §23-92-415.
Exemptions, §23-92-404.
Fees, §23-92-407.
Information required, §23-92-404.
Issuance, §23-92-410.
Renewal, §23-92-404.
Requirement, §23-92-404.
Revocation or suspension, §23-92-410.
Transfer or assignment, §23-92-406.
Net worth requirements, §23-92-408.
Organization's rights and duties, §23-92-409.
Penalties for violations, §23-92-412.
Prohibited practices, §23-92-411.
Employer service assurance organizations, §23-92-416.
Rulemaking, §23-92-419.
Title of provisions, §23-92-401.

PROFESSIONS AND OCCUPATIONS.
Continuing care providers, §§23-93-101 to 23-93-207.

PROPERTY AND CASUALTY INSURANCE.
Applicability of insurer's insolvency protection, §23-89-402.
Assigned risk.
Eligibility for automobile liability insurance through automobile liability assigned risk plan, §23-89-307.
Benefits.
Exclusion of benefits, §23-89-205.
Minimums, §23-89-201.
Payments under coverage, §23-89-208.
Reimbursement.
Insurer's rights of reimbursement, §23-89-207.
Bodily injury coverage.
Property damage coverage, §23-89-404.
Required, §23-89-403.
Coverage.
Bodily injury, §23-89-403.
Property damage, §23-89-404.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Definitions.
Cancellation of policy, §23-89-301.
Uninsured motor vehicle, §23-89-401.
Eligibility.
Automobile liability insurance through automobile liability assigned risk plan, §23-89-307.
Exclusion of benefits, §23-89-205.
Fire loss reporting act.
Annual statement, §23-88-402.
Confidential information, §23-88-403.
Notice regarding fire protection, §23-88-404.
Rulemaking, §23-88-405.
Title of provisions, §23-88-401.
Fire protection impact statement, §23-88-104.
First party coverage.
Required coverage, §23-89-202.
Guaranty, §§23-90-101 to 23-90-123.
Insolvency.
Insolvency protection.
Applicability, §23-89-402.
Insured insolvency does not release liability insurer, §23-89-102.
Liabilities.
Tort liability.
Retention, §23-89-206.
Notice.
Cancellation of policies, §23-89-304.
Nonrenewal of policies, §23-89-305.
Proof of mailing, §23-89-306.
Notice prior to expiration of policy, §23-88-105.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Passengers.
Coverage for passengers and other not occupying another vehicle, §23-89-204.
Policies.
Cancellation, §23-89-301.
Grounds, §23-89-303.
No liability or cause of action against persons for information or statements relating to cancellation, §23-89-308.
Proof of mailing of notices, §23-89-306.
Time for notice, §23-89-304.
Definitions, §23-89-301.
First party coverage.
Required coverage, §23-89-202.
Grounds for cancellation of policy, §23-89-303.
Nonrenewal.
Liability or cause of action, §23-89-308.
Notice, §23-89-305.
Proof of mailing of notices, §23-89-306.
Statement of grounds for nonrenewal, §23-89-305.
Notice prior to expiration, §23-88-105.
Passengers.
Coverage for passengers and others not occupying another vehicle, §23-89-204.
Property and casualty insurance guaranty.
Issuance of new or renewal policies, §23-90-118.
Rejection of coverage, §23-89-203.
Valued policy law, §23-88-101.
Portable electronics insurance, §§23-88-501 to 23-88-507.
Private passenger automobile liability insurance, §23-89-209.
Property and casualty insurance guaranty, §§23-90-101 to 23-90-123.
Accounts and accounting.
Assessments, §23-90-114.
Advertisement and statement prohibition, §23-90-121.
Advisory association.
Conflicts of interest.
Members entering into contracts, §23-90-110.
Creation, §23-90-106.
Powers and duties, §23-90-108.
Procedures, §23-90-107.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Property and casualty insurance guaranty —Cont'd
Advisory association —Cont'd
Recommendations and reports, §23-90-109.
Appeals, §23-90-123.
Applicability of chapter, §23-90-104.
Assessments.
Accounting for and repayment of, §23-90-114.
Claims, §23-90-112.
Credit against taxes, §23-90-119.
Estimation of amount needed to pay claims, §23-90-112.
Failure to pay, §23-90-113.
Taxation.
Credit against taxes, §23-90-119.
Certificates of authority.
Suspension or revocation, §23-90-113.
Citation of chapter, §23-90-101.
Claims.
Applicability of chapter, §23-90-111.
Estimation of amount needed to pay claims, §23-90-112.
Notification of insureds, §23-90-111.
Payment, §23-90-115.
Covered claims, §23-90-115.
Estimation of amount needed to pay claims, §23-90-112.
Right of recovery, §23-90-117.
Construction and interpretation, §23-90-105.
Covered claims, §23-90-111.
Defined, §23-90-103.
Definitions, §23-90-103.
Duties of receiver, §23-90-116.
Estimated amount needed to pay claims, §23-90-112.
Exemptions from act, §23-90-104.
Failure to pay assessment, §23-90-113.
Legislative declaration, §23-90-102.
Liability, §23-90-120.
Liberal construction of chapter, §23-90-105.
Net direct written premiums.
Defined, §23-90-103.
Notice, §23-90-111.
Payment of covered claims, §23-90-115.
Defined, §23-90-103.
Policies.
Issuance of new or renewal policies, §23-90-118.
Purpose of act, §23-90-102.
PROPERTY AND CASUALTY INSURANCE —Cont'd
Property and casualty insurance guaranty —Cont'd
Receivership.
Duties of receiver, §23-90-116.
Right of recovery, §23-90-117.
Rules and regulations, §23-90-122.
Short title, §23-90-101.
Suspension or revocation of certificate of authority, §23-90-113.
Taxation.
Assessments as credit against taxes, §23-90-119.
Title of chapter, §23-90-101.
Railroads.
Casualty insurance.
Railroad accidents not to be considered in automobile insurance, §23-89-302.
Rates and charges.
Fire protection impact statement, §23-88-104.
Receivership.
Property and casualty insurance guaranty.
Duties of receiver, §23-90-116.
Reimbursement.
Insurers' rights of reimbursement, §23-89-207.
Rejection of coverage, §23-89-203.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Risk-sharing plans, §§23-95-101 to 23-95-108.
Board, §23-95-103.
Construction and interpretation, §23-95-102.
Governing board, §23-95-103.
Hearings, §23-95-104.
Immunity from liability, §23-95-107.
Information for individuals, §23-95-106.
Intent of chapter, §23-95-101.
Liability, §23-95-107.
Plan for coverage.
Contents, §23-95-105.
Requirement, §23-95-104.
Purposes of chapter, §23-95-101.
Required plan.
Information about services prescribed in plan, §23-95-106.
Participation by insurer in losses and expenses, §23-95-105.
Requirements, §23-95-105.
Voluntary plan not approved or submitted to commissioner, §23-95-104.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Risk-sharing plans —Cont'd
Rules and regulations, §23-95-108.
Voluntary plan.
Information about services prescribed, §23-95-106.
Insurers within state to prepare, §23-95-104.
Participation by insurer in losses and expenses, §23-95-105.
Requirements, §23-95-105.
Submission to commissioner for approval, §23-95-104.
Rural risk underwriting association, §§23-88-301 to 23-88-309.
Appeals, §23-88-309.
Commissioner's powers and duties, §23-88-308.
Governing board, §23-88-304.
Insurer.
Defined, §23-88-302.
Legislative intent, §23-88-301.
Liability of insurer, §23-88-307.
Net direct written premiums.
Defined, §23-88-302.
Person.
Defined, §23-88-302.
Plan of property insurance, §23-88-303.
Promulgation and approval, §23-88-305.
Provisions, §23-88-306.
Subrogation.
Injured persons subrogated to right of insured, §23-89-101.
Insurer making payment, §23-89-405.
Torts.
Retention of tort liability, §23-89-206.
Uninsured motorists.
Definitions, §23-89-401.
Valued policy law.
Property insurance, total loss by fire or natural disaster, §23-88-101.

PROSTHETIC MEDICAL EQUIPMENT.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include prosthetists, §23-99-203.
Health insurance consumer protection.
Coverage required, §23-99-417.

PSYCHOLOGICAL EXAMINERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

PSYCHOLOGISTS.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM.
Lottery commission.
Employees of commission, participation, §23-115-304.

PUBLIC FUNDS.
Horse racing.
Arkansas racing commission purse and awards funds, §23-110-409.
Insurance.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Motor vehicles.
Motor vehicle commission fund.
Disposition, §23-112-205.

PUBLIC PURCHASING AND CONTRACTING.
Lotteries.
Procurements, §23-115-701.
Vendors, §§23-115-501 to 23-115-504.

PURCHASING GROUPS.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

Q

QUALITY ASSESSMENT AND IMPROVEMENT SYSTEMS.
Managed health care plans, §§23-99-701 to 23-99-706.

R

RACING.
Horse racing.
General provisions, §§23-110-101 to 23-110-415.

RADIO.
Portable electronics insurance, §§23-88-501 to 23-88-507.

RAFFLES.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

RAILROADS.
Insurance.
Casualty insurance.
Railroad accidents not to be considered in automobile insurance, §23-89-302.

RECEIVERS.
Continuing care providers.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Insurance.
Property and casualty insurance guaranty.
Duties of receiver, §23-90-116.

RECIPROCITY.
Motor vehicle dealers.
Licenses, §23-112-312.

RECORDS.
Amusements, §23-89-516.
Charitable bingo and raffles.
Examination and inspection, §23-114-705.
Excise taxes.
Reporting.
Maintenance of records to substantiate report, §23-114-603.
Gift certificates, §23-114-406.
Recordkeeping, §23-114-405.
Greyhound racing.
Franchise holders, §23-111-511.
Amount of money wagered, §23-111-509.
Racing commission to have access, §23-111-512.
Horse racing.
Franchise holders, §23-110-412.
Racing commission to have access to records, §23-110-413.
Insurance.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Lotteries.
Confidential information, §23-115-404.

RECORDS —Cont'd
Recreational vehicle franchises.
Retention, §23-112-1005.
Title insurance.
Access to public records, §23-103-417.
Retention of records, §23-103-414.

RECREATIONAL VEHICLE FRANCHISES, §§23-112-1001 to 23-112-1023.
Action to recover damages, §23-112-1022.
Area of sales responsibility, §23-112-1010.
Conditions applicable, §23-112-1010.
Defined, §23-112-1003.
Bond.
License requirement, §23-112-1005.
Change of business or corporate name.
Notification, §23-112-1006.
Change of employer.
Factory representative, §23-112-1007.
Salesperson, §23-112-1008.
Change of location.
Endorsement on license, §23-112-1006.
Change of ownership of dealer, §23-112-1015.
Civil penalties, §23-112-1020.
Coercion of dealer.
Prohibited acts, §23-112-1018.
Compensation for warranty service, §23-112-1016.
Damage to vehicle before arrival at dealership, §23-112-1017.
Dealer agreement.
Application for license accompanied by, §23-112-1005.
Defined, §23-112-1003.
Good cause for termination, cancellation, nonrenewal, §23-112-1012.
Inspection or rejection of vehicle.
Time frame, §23-112-1017.
Notice of termination, cancellation, nonrenewal, §23-112-1012.
Renewal, §23-112-1011.
Repurchase of inventory.
Termination, cancellation, nonrenewal, §23-112-1013.
Sale of remaining inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1014.
Termination, cancellation, nonrenewal, §23-112-1012.
Repurchase of inventory, §23-112-1013.

RECREATIONAL VEHICLE FRANCHISES —Cont'd
Dealer agreement —Cont'd
Termination, cancellation, nonrenewal —Cont'd
Sale of remaining inventory, §23-112-1014.
Death, incapacity or resignation of designated dealer principal, §23-112-1015.
Definitions, §23-112-1003.
Engaging in the business of buying, selling, or exchanging recreational vehicles, §23-112-1004.
Display of license upon request.
Factory representative, §23-112-1007.
Salesperson, §23-112-1008.
Enforcement, §23-112-1021.
Engaging in business without license.
Unlawful act, §23-112-1004.
Family succession.
Death, incapacity or resignation of designated dealer principal, §23-112-1015.
File with respect to licensed salespersons.
Commission to maintain, §23-112-1008.
Injunctions, §23-112-1023.
Inspection or rejection of vehicle by dealer.
Time frame included in dealer agreement, §23-112-1017.
Inventory.
Repurchase.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1013.
Sale of remaining inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1014.
Legislative findings, §23-112-1002.
Liability insurance.
Dealer to provide proof, §23-112-1005.
Licenses.
Appeal.
Revocation or suspension.
Salesperson terminated from employment, §23-112-1008.
Application, §§23-112-1004, 23-112-1005.
Denial, §23-112-1019.
Bond, §23-112-1005.
Change of location.
Endorsement on license, §23-112-1006.

RECREATIONAL VEHICLE FRANCHISES —Cont'd
Licenses —Cont'd
Denial, §23-112-1019.
Display upon request.
Factory representative, §23-112-1007.
Salesperson, §23-112-1008.
Expiration, §23-112-1009.
Fees, §23-112-1004.
Hearing.
Revocation or suspension.
Salesperson terminated from employment, §23-112-1008.
Issuance, §23-112-1006.
Permit in lieu of license.
Salesperson, §23-112-1008.
Required, §23-112-1004.
Revocation or suspension, §23-112-1019.
Monetary penalty in lieu of, §23-112-1020.
Salesperson terminated from employment, §23-112-1008.
Mediation.
Demand before bringing suit, §23-112-1022.
Orders directing compliance, §23-112-1021.
Penalties in lieu of revocation or suspension of license, §23-112-1020.
Permit in lieu of license.
Salesperson, §23-112-1008.
Records.
Retention, §23-112-1005.
Repair of vehicle damaged before arrival at dealership, §23-112-1017.
Repurchase of inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1013.
Retention of records, §23-112-1005.
Sale of business resulting in change of dealer ownership, §23-112-1015.
Sale of remaining inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1014.
Termination of employment.
Salesperson.
Report by employer to commission, §23-112-1008.
Title of act, §23-112-1001.
Unlawful acts, §23-112-1004.
Warranty claims.
Approval or disapproval by warrantor, §23-112-1016.

RECREATIONAL VEHICLE FRANCHISES —Cont'd
Warranty obligation, §23-112-1016.
Warranty parts.
Reimbursement to dealer, §23-112-1016.
Warranty service.
Compensation, §23-112-1016.

RECREATIONAL VEHICLES.
Dealers, §§23-112-1001 to 23-112-1023.
Defined, §23-112-1003.
Franchises, §§23-112-1001 to 23-112-1023.
Sales.
Dealers, §§23-112-1001 to 23-112-1023.
Special events, §§23-112-901 to 23-112-905.
Authority to waiver relevant market area and rules, §23-112-905.
Definitions, §23-112-902.
Economic impact statements, §23-112-903.
Public policy, §23-112-901.
Significant positive economic impact determinations, §23-112-904.
Statements of estimated positive economic impact, §23-112-903.

REINSURANCE.
Life and health insurance guaranty association.
Assumption by association, §23-96-110.

RENT.
Lottery retailers.
Rent based on percentage of retail sales.
Compensation from lottery considered in computing rental payment, §23-115-606.

RENTAL VEHICLES.
Lessors.
Unlawful practices, §23-112-404.

REPORTS.
Attorneys at law.
Legal insurance, §§23-91-215, 23-91-227.
Exempt persons, §23-91-206.
Insurance.
Legal insurance.
Annual report, §23-91-215.
Exempt persons, §23-91-206.
Public documents, §23-91-227.
Life and health insurance guaranty association.
Board of directors.
Annual report, §23-96-109.

REPORTS —Cont'd
Insurance —Cont'd
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Property and casualty insurance guaranty.
Advisory association, §23-90-109.
Lotteries.
Arkansas lottery commission.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Director's reporting duties, §23-115-302.
Financial and other reports by commission, §23-115-206.

REPOSSESSION OF PERSONAL PROPERTY.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

RESIDENCY.
Lottery commission.
Qualifications of members, §23-115-203.

RESIDENTIAL EARTHQUAKE INSURANCE.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.

RESPIRATORY CARE PRACTITIONERS.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

RISK RETENTION AND PURCHASING GROUPS.
Agents.
Licenses, §§23-94-211, 23-94-213.
Brokers.
Licenses, §§23-94-211, 23-94-213.
Certificates of registration.
Domestic risk retention groups.
Requirements, §23-94-204.
Foreign risk retention groups.
Requirements, §23-94-205.
Purchasing groups, §23-94-208.
Citation of act.
Short title, §23-94-201.
Commissioner.
Administrative and procedural authority regarding, §23-94-212.

RISK RETENTION AND PURCHASING GROUPS —Cont'd
Commissioner —Cont'd
Defined, §23-94-203.
Rules and regulations, §23-94-215.
Compulsory associations, §23-94-206.
Definitions, §23-94-203.
Domestic risk retention groups.
Certificates of registration.
Requirements, §23-94-204.
Plan of operation or feasibility study.
Required, §23-94-204.
Statements.
Filing, §23-94-204.
Examinations.
Foreign risk retention groups, §23-94-205.
Foreign risk retention groups.
Certificates of registration.
Requirements, §23-94-205.
Examinations, §23-94-205.
Penalties, §23-94-205.
Plan of operation or feasibility study.
Required, §23-94-205.
Service of process.
Designation of commissioner as agent for, §23-94-205.
Statements.
Filing, §23-94-205.
Trade practices act.
Compliance with act, §23-94-205.
Injunctions.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Liability insurance.
Restrictions on insurance purchased by purchasing groups, §23-94-209.
Licenses.
Agents, §§23-94-211, 23-94-213.
Brokers, §§23-94-211, 23-94-213.
Notice.
Foreign risk retention groups.
Notice to purchasers, §23-94-205.
Purchasing groups.
Requirements, §23-94-208.
Plan of operation or feasibility study.
Defined, §23-94-203.
Domestic risk retention groups.
Required, §23-94-204.
Foreign risk retention groups.
Required, §23-94-205.
Privilege taxes, §23-94-210.
Purchasing groups.
Certificates of registration, §23-94-208.
Compulsory associations, §23-94-206.

RISK RETENTION AND PURCHASING GROUPS —Cont'd
Purchasing groups —Cont'd
Exemption from certain laws, §23-94-207.
Notice.
Requirements, §23-94-208.
Restrictions on insurance purchased by, §23-94-209.
Service of process.
Designation of commissioner as agent, §23-94-208.
Purposes of provisions, §23-94-202.
Registration.
Certificates of registration.
Domestic risk retention groups.
Requirements, §23-94-204.
Foreign risk retention groups.
Requirements, §23-94-205.
Purchasing groups, §23-94-208.
Rules and regulations.
Commissioner, §23-94-215.
Service of process.
Foreign risk retention groups.
Designation of commissioner as agent for, §23-94-205.
Purchasing groups.
Designation of commissioner as agent, §23-94-208.
Subpoenas.
Authority of commissioner, §23-94-212.
Taxation, §23-94-210.
Title of act.
Short title, §23-94-201.
Trade practices act.
Foreign risk retention groups.
Compliance with act, §23-94-205.

RISK-SHARING PLANS FOR PROPERTY AND CASUALTY INSURANCE, §§23-95-101 to 23-95-108.

RURAL HEALTH CLINICS.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

RURAL RISK UNDERWRITING ASSOCIATION.
Association.
Defined, §23-88-302.
Commissioner.
Defined, §23-88-302.

RURAL RISK UNDERWRITING ASSOCIATION —Cont'd
Commissioner —Cont'd
Plan.
Submission to commissioner, §23-88-305.
Rules and regulations, §23-88-308.
Companies.
Insurer, §23-88-302.
Declaration of legislature, §23-88-301.
Definitions, §23-88-302.
General provisions, §§23-88-301 to 23-88-309.
Governing board, §23-88-304.
Appointment of members, §23-88-304.
Assessments.
Authorization to make, §23-88-306.
Composition, §23-88-304.
Number of members, §23-88-304.
Plan.
Duties as to plan, §23-88-305.
Terms of members, §23-88-304.
Legislative intent, §23-88-301.
Liability of plan participants, §23-88-307.
Membership, §23-88-303.
Person.
Defined, §23-88-302.
Plan, §23-88-303.
Appeals, §23-88-309.
Contents, §23-88-306.
Establishment of underwriting standards, §23-88-306.
Requirements of plan, §23-88-306.
Submission to commissioner, §23-88-305.
Policies.
Appeals, §23-88-309.
Premiums.
Net direct written premiums.
Certification of aggregate by commissioners, §23-88-308.
Defined, §23-88-302.
Rules and regulations.
Commissioner to have authority to promulgate, §23-88-308.
Standards for underwriting.
Plan to establish, §23-88-306.

S

SAFETY.
Amusement ride and attraction safety generally, §§23-89-501 to 23-89-518.

SAFETY RESPONSIBILITY, MOTOR VEHICLES.
Insurance.
College graduates.
Premium reduction for, §23-89-210.
Underinsured motorists, §23-89-209.
Uninsured motorists.
Casualty insurance.
Bodily injury coverage, §23-89-403.
Insurers' insolvency protection, §23-89-402.
Property damage coverage, §23-89-404.
Subrogation of insurer, §23-89-405.
Uninsured motorists defined, §23-89-401.

SALARIES.
Lottery commission.
Employees of commission, §23-115-305.
Special allowances, §23-115-306.

SALES.
Motorcycles.
Special motorcycle events, §§23-112-801 to 23-112-806.
Motor vehicles.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.

SCHOLARSHIPS.
Arkansas scholarship lottery act, §§23-115-101 to 23-115-1102.
Lottery act, §§23-115-101 to 23-115-1102.

SCHOOLS AND EDUCATION.
Arkansas scholarship lottery act, §§23-115-101 to 23-115-1102.
Lottery for education, §§23-115-101 to 23-115-1102.

SECURED TRANSACTIONS.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

SECURITIES.
Lottery vendors.
Deposit of financial security, §23-115-502.

SENIOR CITIZENS.
Continuing care providers, §§23-93-101 to 23-93-207.
Long-term care insurance generally, §§23-97-301 to 23-97-321.

SENTENCING.
Habitual offenders.
Used motor vehicle buyers protection, §23-112-603.

SENTENCING —Cont'd
Motor vehicles.
Used motor vehicle buyers protection.
Repeat offenders, §23-112-603.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.
Attorneys at law.
Legal insurance, §23-91-208.
Risk retention and purchasing groups.
Foreign risk retention groups.
Designation of commissioner as agent for, §23-94-205.
Purchasing groups.
Designation of commissioner as agent, §23-94-208.

SETTLEMENT.
Underinsured motorists.
Tentative agreement, §23-89-209.

SOCIAL WORKERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

SPACE WALKS.
Insurance for amusements, §§23-89-501 to 23-89-518.

STATE POLICE.
Motor vehicles.
Used motor vehicle buyers protection.
Disbursement of fines, §23-112-603.

SUBPOENAS.
Greyhound racing.
Powers of racing commission, §23-111-205.
Horse racing.
Racing commission.
Powers, §23-110-205.

SUBROGATION.
Insurance.
Casualty insurance.
Injured person subrogated to right of insured, §23-89-101.
Insurer making payment, §23-89-405.
Life and health insurance guaranty association.
Subrogation rights, §23-96-114.
Underinsured motorists, §23-89-209.

SUNDAY.
Horse racing.
Racing meets.
Sunday racing, §23-110-402.

T

TAMPERING.
Lotteries.
Penalty for tampering with equipment, §23-115-902.

TAXATION.
Admission tax.
Greyhound racing, §23-111-510.
Horse racing, §23-110-411.
Attorneys at law.
Legal insurance.
Premiums, §23-91-226.
Charitable bingo and raffles.
Excise taxes, §§23-114-601 to 23-114-606.
Excise taxes.
Charitable bingo and raffles, §§23-114-601 to 23-114-606.
Greyhound racing.
Admission tax, §23-111-510.
Disposition of taxes, §23-111-104.
Horse racing.
Admission tax, §23-110-411.
Disposition of taxes, §23-110-104.
Legal insurance.
Premiums, §23-91-226.

TELECOMMUNICATIONS.
Greyhound racing.
Wagering.
Patrons with money on deposit placing wager by telephone or mobile device, §23-111-508.
Horse racing.
Wagering.
Patrons with money on deposit placing wagers by telephone or mobile devices, §23-110-405.

TELEVISION.
Portable electronics insurance, §§23-88-501 to 23-88-507.

TEMP AGENCIES.
Professional employer organizations, §§23-92-401 to 23-92-419.

TITLE INSURANCE, §§23-103-401 to 23-103-417.
Access to public records, §23-103-417.
Agents.
Restrictions on activities, §23-103-409.

TITLE INSURANCE —Cont'd
Audit of insurer, §23-103-411.
Authorized activities of insurers, §23-103-404.
Limitations, §23-103-405.
Board of directors of insurer.
Appointment restrictions, §23-103-412.
Contracts between agency and insurer, §23-103-407.
Definitions, §23-103-402.
Determination of insurability.
Prerequisite to policy issuance, §23-103-408.
Disciplinary actions and other penalties, §23-103-416.
Disclosures to policyholders, §23-103-413.
Employment restrictions of insurers, §23-103-412.
Examination of books and records of insurers, §23-103-406.
Inventory of policy forms and numbers, §23-103-410.
License requirement, §23-103-403.
Notice of availability of closing protection, §§23-103-405, 23-103-413.
Restrictions on activities of agents, §23-103-409.
Restrictions on activities of insurers, §23-103-405.
Retention of records, §23-103-414.
Rights of policyholders, §23-103-413.
Rules generally, §23-103-415.
Rules regarding audits, §23-103-411.
Search requirements, §23-103-408.
Settlement protection, §23-103-405.
Title of provisions, §23-103-401.
Violation of provisions, §23-103-416.

TORTS.
Insurance.
Casualty insurance.
Retention of tort liability, §23-89-206.
Lottery commission, claims against, §23-115-208.

TRUSTS AND TRUSTEES.
Insurance.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Minimum basic benefit policies.
Qualified trust, §23-98-104.
Defined, §23-98-102.
Formation, §23-98-104.

U

UNCLAIMED PROPERTY.
Lotteries.
Prizes or proceeds unclaimed, §23-115-403.

UNDERINSURED MOTORISTS, §23-89-209.
Set-offs or reduction of recovery, §23-89-403.

UNDERWRITERS.
Title insurance.
Underwriting contracts, §23-103-407.

UNINSURED MOTORISTS.
Casualty insurance.
Bodily injury coverage.
Required, §23-89-403.
Definition of uninsured motorist, §23-89-401.
Insurers' solvency protection.
Applicability, §23-89-402.
Property damage coverage, §23-89-404.
Subrogation of insurer making payment, §23-89-405.

USED MOTOR VEHICLES.
Buyers protection, §§23-112-601 to 23-112-617.
Advertising.
Information required in printed advertisements, §23-112-610.
Definitions, §23-112-602.
Disbursement of fines, §23-112-603.
Legislative findings, §23-112-601.
Powers generally, §23-112-604.
Service and handling fees, §23-112-617.
Violations.
Enumeration, §23-112-605.
Penalty, §23-112-603.

V

VALUED POLICY LAW.
Property insurance, total loss by fire or natural disaster, §23-88-101.

VENDORS AND PURCHASERS.
Lottery vendors, §§23-115-501 to 23-115-504.

VENUE.
Charitable bingo and raffles.
Injunctions, §23-114-704.
Motor vehicle dealers.
License discipline.
Hearings, §23-112-503.

VENUE —Cont'd
Recreational vehicle franchises.
Actions to recover damages, §23-112-1022.

VICARIOUS LIABILITY.
Professional employer organizations.
Liability limitation, §23-92-409.

VIDEO GAME SYSTEMS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

VIDEO LOTTERIES.
Prohibition, §§23-115-407, 23-115-408.

W

WARRANTIES.
Recreational vehicle franchises.
Warrantor's warranty obligations, §23-112-1016.

WATER AMUSEMENT ATTRACTIONS.
Insurance for amusements, §§23-89-501 to 23-89-518.

WITNESSES.
Greyhound racing.
Powers of racing commission as to, §23-111-205.
Horse racing.
Racing commission.
Powers as to, §23-110-205.

WOMEN.
Lotteries.
Participation by female-owned businesses, §23-115-401.

Index to Title 23

A

ABANDONED PROPERTY.
Railroads rights of way.
Process, §23-12-206.
Railroad to offer to sell to municipality, §23-12-205.
Transfer of ownership or responsibility, §23-12-207.

ABANDONED SECURITIES REGISTRATION STATEMENTS.
Conditions allowing commissioner to consider statement as abandoned and withdrawn, §23-42-404.

ABORTION.
Health insurance exchanges.
Abortion coverage prohibited, §23-79-156.
Supplemental abortion coverage, §23-79-156.

ACCIDENT INSURANCE.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.

ACCIDENTS.
Amusements.
Records and statistics, §23-89-516.
Reporting, §23-89-510.
Railroads.
Clearing right-of-way following derailment or wreck, §23-12-203.
Safe transportation of railroad employees by contract carriers.
Drug or alcohol testing of driver, §23-16-505.

ACCOUNTANTS.
Certified public accountants.
Insurance commissioner.
Examination of insurers.
Power to retain certified public accountant, §23-61-203.
Insurance.
Examination of insurers.
Commissioner may retain certified public accountant, §23-61-203.

ACCOUNTINGS BY FIDUCIARIES.
Legal insurance.
Separate accounts, §23-91-213.

ACTIONS.
Choice of health care providers by patients.
Enforcement of provisions by providers, §23-99-207.
Continuing care providers.
Enforcement of chapter, §23-93-104.
Fraternal benefit societies.
Indemnification or reimbursement of persons threatened by, §23-74-203.
Highways.
State highway and transportation department.
Compelling compliance with provisions of act and orders, §23-1-104.
Loan brokers.
Advance fee loan brokers.
Violations of subchapter, §23-39-405.
Lottery commission.
Removal of members, proceedings on, §23-115-210.
Mortgages and deeds of trust.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Public service commission.
Compelling compliance with provisions of act and orders, §23-1-104.
Public utilities.
Jurisdiction.
Actions by or against commission, §23-1-108.
Jury.
Actions to be tried without jury, §23-1-110.
Railroads.
Discrimination.
Recovery of penalties, §23-10-103.
Injuries.
Who may sue for personal injuries, §23-12-903.
Recreational vehicle franchises.
Recovery of damages, §23-112-1022.
Rural telecommunications cooperatives.
Indemnification of directors, officers, employees or agents, §23-17-238.

ACTIONS —Cont'd
Rural telecommunications cooperatives —Cont'd
Limitation of actions.
Suits against telecommunications companies or cooperatives, §23-17-237.
Power to sue and be sued in corporate name, §23-17-205.
Savings and loan associations.
Damages.
Limitation on right to recover damages from association, §23-37-507.
Underinsured motorists, §23-89-209.

ACTUARIES.
Insurance.
Examination of insurers.
Commissioner may retain independent actuaries, §23-61-203.
Property and casualty actuarial opinion law, §§23-63-1901 to 23-63-1905.

ADMISSION TAX.
Greyhound racing, §23-111-510.
Horse racing, §23-110-411.

ADOPTION.
Health insurance.
Coverage for adopted minors, §23-79-137.
Insurance.
Health coverage for adopted minors, §23-79-137.

ADVERTISING.
Continuing care providers.
Untrue, deceptive or misleading statements.
Prohibited, §23-93-110.
Health maintenance organizations.
Untrue or misleading advertising.
Prohibited practices, §23-76-119.
Informational advertising.
Defined, §23-4-207.
Insurance.
False advertising.
Federal or state government endorsement, §23-66-609.
Life and health insurance guaranty association act.
Advertisement of act in insurance sales.
Prohibited, §23-96-105.
Property and casualty insurance guaranty.
Prohibited advertisements or statements, §23-90-121.

ADVERTISING —Cont'd
Insurance —Cont'd
Unfair competition and trade practices.
Prior approval required, §23-66-316.
Life settlements, §23-81-808.
Medicare supplement insurance policies.
Filing requirements, §23-79-408.
Mortgage bankers, brokers and servicers.
Prohibited activities, §23-39-513.
Political advertising.
Defined, §23-4-207.
Promotional advertising.
Defined, §23-4-207.
Public utilities.
Recovery of advertising costs, §23-4-207.
Railroads.
Passes.
Issuance in exchange for advertising space, §23-4-806.
Securities regulation.
Filing requirement, §23-42-405.

AERONAUTICS.
Air commerce, §§23-14-101 to 23-14-128.

AFFIDAVITS.
Banks.
Organizational expenses, §23-48-303.
Greyhound racing.
Residence of officers and directors of franchise holders, §23-111-406.
Penalty for false affidavit, §23-111-406.
Insurance.
Brokers.
Surplus lines, §23-65-306.
Professional employer organizations.
Employer service assurance organization affidavit, §23-92-414.
Filing, §23-92-418.
Trusts and trustees.
Banks as trustees, §23-47-706.

AGE.
Fraternal benefit societies.
Membership.
Adult membership.
Minimum age, §23-74-201.

AGENTS.
Automobile clubs or associations, §23-77-108.
Banks.
Affiliates, §23-48-105.

AGENTS —Cont'd
Banks —Cont'd
Certificates of deposit, §§23-47-301 to 23-47-309.
Obligation to inquire into limitations on powers, §23-48-104.
Out-of-state banks.
Registered agents, §23-48-1004.
Change of agent, §23-48-1005.
Resignation, §23-48-1006.
Certificates of deposit.
Definitions, §23-47-301.
Designation, §§23-32-501 to 23-32-509.
Designation of agent, §23-47-304.
Discharge of bank from claims, §23-47-307.
Effect on other laws, §23-47-309.
Forms, §23-47-303.
Payments to agent, §23-47-305.
Discharge of bank, §23-47-307.
Payments to minors, §23-47-306.
Scope of subchapter, §23-47-302.
Setoffs, §23-47-308.
Termination of agency, §23-47-304.
Farmers' mutual aid associations.
Licensing, §23-73-121.
Financial institutions.
Designation on certificates of deposit, §§23-32-501 to 23-32-509.
Forms.
Certificates of deposit.
Agency designation, §23-47-303.
Health maintenance organizations.
Regulation, §23-76-120.
Legal insurance.
Licenses, §23-91-219.
Management and exclusive agency contracts, §23-91-214.
Life settlements.
Designation of agent for service of process, requirement, §23-81-803.
Public utilities.
Acts of agent are acts of corporation, §23-1-107.
Savings and loan associations.
Foreign associations, §23-37-602.
Title insurance.
Generally, §§23-103-401 to 23-103-417.

AGRICULTURE.
Farmers' mutual aid associations, §§23-73-101 to 23-73-123.
Futures.
Dealing in futures generally, §§23-44-101 to 23-44-109.
Insurance.
Farmers' mutual aid associations, §§23-73-101 to 23-73-123.

AGRICULTURE —Cont'd
Loans.
Liens on agricultural lands as security.
Prepayment, §23-32-203.
Rural telecommunications cooperatives, §§23-17-201 to 23-17-242.
Telecommunications.
Rural telecommunications cooperatives, §§23-17-201 to 23-17-242.

AIR COMMERCE, §§23-14-101 to 23-14-128.
Abandonment of service, §23-14-120.
Accounts and accounting.
Carriers, §23-14-125.
Bonds, surety.
Carriers, §23-14-112.
Certificates.
Applications for, §23-14-110.
Fee, §23-14-128.
Notice of filing, §23-14-110.
Emergency landings.
Terms and conditions of certificates not violated, §23-14-127.
Evidence of compliance with other laws required, §23-14-113.
Issuance, §23-14-114.
Evidence of compliance with other laws required, §23-14-113.
Temporary certificate, §23-14-111.
Lease of certificate, §23-14-116.
Modification, §23-14-117.
Required to engage in business, §23-14-109.
Suspension or revocation, §23-14-117.
Temporary certificate, §23-14-111.
Terms and conditions, §23-14-115.
Emergency landings.
Terms and conditions of certificates not violated, §23-14-127.
Transfer, §23-14-116.
Citation of act.
Short title, §23-14-101.
Compliance with provisions, §23-14-105.
Control, supervision and regulation.
Transportation safety agency, §23-14-106.
Definitions, §23-14-102.
Discontinuance of service, §23-14-120.
Exemptions from act.
Interstate common carriers, §23-14-103.

AIR COMMERCE —Cont'd
Exemptions from act —Cont'd
United States mail, §23-14-103.
Extension of service.
Transportation safety agency may require, §23-14-119.
Interstate common carriers.
Exemption from provisions, §23-14-103.
Investigations.
Powers of transportation safety agency, §23-14-107.
Mail.
Exemption of United States mail from provisions, §23-14-103.
Notice.
Abandonment or discontinuance of service, §23-14-120.
Certificates.
Filing of application, §23-14-110.
Extension of service, §23-14-119.
Required upon notice, §23-14-119.
Rates and charges.
Changes.
Suspension of proposed new rate, §23-14-123.
Free or reduced service, §23-14-122.
Just and reasonable rates, §23-14-118.
Tariffs.
Filing, §23-14-121.
Observance, §23-14-121.
Reports.
Carriers, §23-14-125.
Right of entry.
Transportation safety agency, §23-14-126.
Rules and regulations.
Penalties for violations, §23-14-104.
Service.
Extension, §23-14-119.
Reasonable and adequate service and facility, §23-14-118.
State highway and transportation department.
Conflicts of interest.
Prohibited, §23-14-108.
Control, supervision and regulation, §23-14-106.
Definition of "commission," §23-14-102.
Duties, §23-14-107.
Fees, §23-14-128.
Powers, §23-14-107.
Right of entry, §23-14-126.
Stock and stockholders.
Issuance of securities by carriers, §23-14-124.
Title of act.
Short title, §23-14-101.

AIR COMMERCE —Cont'd
Violations of act or regulations.
Penalties, §23-14-104.

ALCOHOLIC BEVERAGES.
Insurance.
Care and treatment of alcohol and drug dependency.
Insurers transacting health, accident or disability insurance in state.
Requirements of group policies, contracts and plans providing hospital and medical coverage, §23-79-139.
Health insurance.
Policy provisions, §23-85-126.
Motor carriers.
Operation while consuming or under influence of, §23-13-258.
Railroads.
Safe transportation of railroad employees by contract carriers.
Testing of driver for banned substances, §23-16-505.

ALIENS.
Insurance.
Alien insurers.
Defined, §23-60-102.
Domicile, §23-63-104.

ALTERNATIVE FUELS AND ENERGY.
Renewable energy development, §§23-18-601 to 23-18-604.
Authority of public service commission, §23-18-604.
Definitions, §23-18-603.
Legislative findings and declaration, §23-18-602.
Net metering equipment.
Requiring installation, §23-18-604.
Short title, §23-18-601.

AMBULANCES.
Insurance.
Direct reimbursement for ambulance services, §23-79-148.

AMBULATORY SURGICAL CENTERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

AMUSEMENTS.
Accidents.
Records and statistics, §23-89-516.
Reporting, §23-89-510.
Amusement ride and amusement attraction safety insurance.
Accidents.
Records and statistics, §23-89-516.
Reporting, §23-89-510.
Bungee jumping.
Prohibited bungee operations, §23-89-512.
Cancellation of coverage.
Notice, §23-89-507.
Orders, §23-89-507.
Cease and desist orders.
Notice required, §23-89-509.
Operation without safety inspection and insurance, §23-89-504.
Unsafe conditions, §23-89-507.
Citation of subchapter, §23-89-501.
Definitions, §23-89-502.
Disposition of funds received under provisions, §23-89-517.
Emergency inspections, §23-89-506.
Exemptions from provisions, §23-89-503.
Fees.
Action for delinquent fees, §23-89-504.
Disposition of funds received under provisions, §23-89-517.
Inspectors, §23-89-504.
Minimum amount, §23-89-505.
Misdemeanors.
Operation without safety inspection and insurance, §23-89-504.
Nondestructive testing.
Compliance with manufacturer standards, §23-89-515.
Defined, §23-89-502.
Operation without safety inspection and insurance unlawful, §23-89-504.
Orders.
Cancellation or suspension of permits.
Transmission to Arkansas state police, §23-89-509.
Penalties.
Operation without safety inspection and insurance, §23-89-504.
Permits.
Required, §23-89-505.
Portable attractions.
Safety inspections, §23-89-506.
Proof of coverage, §23-89-505.
Ride operators, §23-89-511.

AMUSEMENTS —Cont'd
Amusement ride and amusement attraction safety insurance —Cont'd
Rider safety.
Duties of patrons, §23-89-514.
Posting notices, §23-89-513.
Rules and regulations.
Promulgation, §23-89-508.
Safety inspections.
Director, §23-89-506.
Emergency inspections, §23-89-506.
Fee, §23-89-505.
Determination of fee amounts, §23-89-506.
Frequency, §23-89-506.
Insurance company, §23-89-507.
Portable attractions, §23-89-506.
Required, §§23-89-504, 23-89-505.
Title of subchapter, §23-89-501.
Unsafe conditions.
Cease and desist orders, §23-89-507.
Notice, §23-89-507.
Amusement ride safety advisory board, §23-89-518.
Bungee jumping.
Prohibited bungee operations, §23-89-512.
Inspections.
Amusement rides.
Insurance inspections, §§23-89-504 to 23-89-507.
Insurance.
Amusement ride and amusement attraction safety insurance, §§23-89-501 to 23-89-518.
Intoxication.
Ride operators, §23-89-511.
Nondestructive testing.
Compliance with manufacturer standards, §23-89-515.
Defined, §23-89-502.
Operators of rides.
Qualifications, §23-89-511.
Standard of care, §23-89-511.
Records, §23-89-516.
Ride operators.
Qualifications, §23-89-511.
Standard of care, §23-89-511.
Rider safety.
Duties of patrons, §23-89-514.
Posting notice, §23-89-513.

ANNUITIES.
Fraternal benefit societies.
Contractual benefits provided by societies.
Annuity benefits, §23-74-401.

ANNULMENT OF MARRIAGE.
Insurance.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.

ANY WILLING PROVIDER LAWS.
Choice of health care providers by patients generally, §§23-99-201 to 23-99-209.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.

APPEALS.
Arkansas earthquake authority.
Rulings or decisions of board, §23-102-115.
Banking board.
Final decisions, §23-46-407.
Banks.
Out-of-state banks.
Revocation of certificate of authority, §23-48-1011.
Carriers.
Motor carriers.
Complaints against carriers.
Orders of state highway and transportation department, §23-13-308.
State highway and transportation department.
Orders of department, §23-2-425.
Electric utilities.
Storm recovery securitization financing.
Financing orders, §23-18-903.
Fraternal benefit societies.
Decisions and findings of commissioner of insurance.
Review of, §23-74-702.
Greyhound racing.
Franchises to conduct races.
Refusal to grant temporary franchise, §23-111-302.
Health maintenance organizations.
Revocation or suspension of certificate of authority, §23-76-126.
Highways.
State highway and transportation department.
Motor carriers.
Complaints against carriers.
Order of department, §23-13-308.
Orders.
Appeals to circuit court, §23-2-425.
Appeals from circuit court to supreme court, §23-2-425.

APPEALS —Cont'd
Highways —Cont'd
State highway and transportation department —Cont'd
Orders —Cont'd
Motor carriers.
Complaints against carriers, §23-13-308.
Horse racing.
Findings and orders of racing commission, §23-110-205.
Franchises to conduct horse races.
Refusal to grant, §23-110-302.
Hospital and medical service corporations.
Review of decisions, §23-75-118.
Insurance.
Burial associations.
Revocation of certificates of authority, §§23-78-124, 23-78-125.
Commissioner.
Decisions of commissioner, §23-61-307.
Credit life and disability insurance.
Parties aggrieved by decisions of commissioner, §23-87-119.
Delinquency proceedings, §23-68-103.
Holding companies.
Acts or determinations of commissioner, §23-63-519.
Material transactions disclosures, §23-63-1406.
Policies.
Commercial property and casualty insurance policies.
Appeals from orders of commissioner, §23-79-309.
Property and casualty insurance guaranty.
Rulings of commissioner, §23-90-123.
Rural risk underwriting association.
Applicants for policy, persons insured under plan and others affected by plan may appeal to commissioner, §23-88-309.
Lotteries.
Administrative orders of commission, §23-115-209.
Claims presented to commission, §23-115-208.
Closure of retailer's business by commission, §23-115-609.
Removal of commission member, §23-115-210.
Money services.
License denial, §§23-55-205, 23-55-403.

APPEALS —Cont'd
Mortgage bankers, brokers and servicers.
Review of order of securities commissioner, §23-39-515.
Motor carriers.
Complaints against carriers.
Orders of state highway and transportation department, §23-13-308.
Orders of transportation commission, §23-13-211.
Filing fees, §23-13-215.
Notice, §23-13-212.
Stay of operating authority pending appeal, §23-13-213.
Transcript, §23-13-214.
Pipelines.
Fertilizer.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture.
Orders on applications for authority to transport, §23-15-105.
Public service commission.
Navigable water crossings.
Generally, §§23-3-511, 23-3-512.
Orders.
Judicial review, §23-2-423.
Effect, §23-2-424.
Public utilities.
Acquisition, control or merger.
Judicial review of orders of commission, §23-3-313.
Stay of order pending review, §23-3-314.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Decisions of commission on application for, §23-18-524.
Navigable water crossings, §§23-3-511, 23-3-512.
Risk-based capital act.
Penalties for violation of provisions, §23-63-1314.
Health organizations, §23-63-1513.
Savings and loan associations.
Decision or order of board, §23-37-214.
Appeal to supreme court, §23-37-214.
Trust companies.
Acquisition.
Appeal from adverse decision, §23-51-137.

APPEALS —Cont'd
Trust companies —Cont'd
Commissioner hearings, §23-51-112.
Workers' compensation.
Insurance.
Mandatory insurance plan.
Appeals of orders or rulings, §23-67-309.

APPEARANCES.
Insurance.
Unfair competition and trade practices.
Hearings, §23-66-209.

APPRAISALS AND APPRAISERS.
Insurance.
Examination of insurers.
Commissioner may retain appraisers, §23-61-203.

ARBITRATION.
Mortgages and deeds of trust.
Home loan protection act.
High-cost home loans.
Mandatory arbitration clause, prohibition, §23-53-104.
Railroads.
Livestock, killing or injuring.
Arbitration of damages, §23-12-912.

ARKANSAS CLEAN ENERGY DEVELOPMENT ACT, §§23-18-701 to 23-18-703.

ARKANSAS EARTHQUAKE AUTHORITY ACT, §§23-102-101 to 23-102-119.

ARKANSAS HEALTH INSURANCE MARKETPLACE ACT, §§23-61-801 to 23-61-807.

ARKANSAS HEALTH INSURANCE MARKETPLACE NAVIGATOR, GUIDE AND CERTIFIED APPLICATION COUNSELORS ACT, §§23-64-601 to 23-64-614.

ARKANSAS HOME LOAN PROTECTION ACT.
High cost home loans, §§23-53-101 to 23-53-106.

ARKANSAS RENEWABLE ENERGY DEVELOPMENT ACT OF 2001, §§23-18-601 to 23-18-604.

ARKANSAS RURAL RISK UNDERWRITING ASSOCIATION.
General provisions, §§23-88-301 to 23-88-309.

ARKANSAS SCHOLARSHIP LOTTERY ACT, §§23-115-101 to 23-115-1102.

ARKANSAS VIDEO SERVICE ACT, §§23-19-201 to 23-19-210.

ARREST.
Motor carriers.
Enforcement officers, §23-13-217.
Railroads.
Drunken persons.
Authority of conductors, §23-12-708.
Railroad police.
Jailing of persons arrested, §23-12-704.
Power to arrest, §23-12-703.

ARSON.
Insurance.
Anti-arson applications, §§23-88-201 to 23-88-210.
Alternative application, §23-88-209.
Applicability of provisions, §23-88-203.
Assignment of policy or contract.
When completion of anti-arson application required, §23-88-203.
Change in information.
Notification, §23-88-208.
Defined, §23-88-202.
Forms.
Promulgation by insurance commissioner, §23-88-205.
Mandatory use, §23-88-206.
Penalties.
Violations of subchapter, §23-88-204.
Purpose of subchapter, §23-88-201.
Required to enter into insurance contract, §23-88-207.
Termination of contracts, §23-88-210.

ASSESSMENTS.
Charitable bingo and raffle tickets.
Excise taxes, §23-114-606.
Comprehensive health insurance pool.
Maximum amount, §23-79-508.
Insurance.
Burial associations.
Membership dues and assessments, §23-78-116.
Delinquency proceedings.
Order and levy of assessment, §23-68-131.
Prima facie correct, §23-68-132.
Report and petition for assessment, §23-68-130.

ASSESSMENTS —Cont'd
Insurance —Cont'd
Domestic stock and mutual insurers.
Stockholders or members, §23-69-139.
Life and health insurance guaranty association.
Assessment of member insurers, §23-96-115.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Property and casualty insurance guaranty.
Accounting for and repayment of assessments, §23-90-114.
Claims, §23-90-112.
Taxation.
Credit against taxes, §23-90-119.
Reciprocal insurers, §23-70-118.
Nonassessable policies, §23-70-120.
Time limit for assessments, §23-70-118.
Rural risk underwriting association.
Governing board empowered to make, §23-88-306.

ASSETS.
Credit unions.
Reduction of assets, §23-35-608.
Fraternal benefit societies.
Held, invested and disbursed for use and benefit of society, §23-74-502.
Insurance.
Conflicts in treatment of, §23-63-610.
Deductions from liabilities, §23-63-602.
Defined, §23-63-601.
Delinquency proceedings.
Attachment and garnishment, §23-68-120.
Borrowing on pledge of assets, §23-68-123.
Deposits.
Assignment or conveyance of securities or assets, §23-63-906.
Domestic stock and mutual insurers.
Dissolution.
Distribution of assets to stockholders, §23-69-154.
Impairment of capital or assets, §23-69-138.
Liquidation.
Mutual member's share of assets upon liquidation, §23-69-155.
Limitations, §23-63-603.
Purpose of provisions, §23-63-612.
Reciprocal insurers.
Liquidation of companies.
Subscribers' share in assets, §23-70-122.

ASSETS —Cont'd
Insurance —Cont'd
Valuation, §23-63-611.
Legal insurance.
Investment of assets, §23-91-217.
Rural telecommunications cooperatives.
Dissolution.
Disposition of assets, §23-17-225.

ASSIGNMENTS.
Electric utilities.
Storm recovery securitization financing.
Sale, assignment or transfer of storm recovery property, §23-18-906.
Fraternal benefit societies.
Benefit contracts, §23-74-404.
Insurance.
Deposits.
Conveyance or assignment of securities or assets, §23-63-906.
Life and health insurance guaranty association.
Assignment rights, §23-96-114.
Policies, §23-79-124.
Securities regulations.
Unlawful acts by investment advisers, §23-42-307.

ASSOCIATIONS.
Arkansas rural risk underwriting association, §§23-88-301 to 23-88-309.
Automobile clubs or associations, §§23-77-101 to 23-77-109.
Burial associations.
Insurance, §§23-78-101 to 23-78-125.
Insurance.
Burial associations, §§23-78-101 to 23-78-125.
Life and health insurance guaranty association.
General provisions, §§23-96-101 to 23-96-121.
Rural risk underwriting association, §§23-88-301 to 23-88-309.
Life and health insurance guaranty association.
General provisions, §§23-96-101 to 23-96-121.
Motor vehicles.
Automobile clubs or associations, §§23-77-101 to 23-77-109.
Rural risk underwriting association, §§23-88-301, 23-88-309.
Savings and loan associations.
General provisions, §§23-37-101 to 23-37-706.

ATHLETIC TRAINERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

ATM'S.
Fees, §23-32-208.
Generally, §§23-48-801 to 23-48-810.
Sharing of terminals, §23-32-208.

ATTACHMENT.
Fraternal benefit societies.
Benefits not attachable, §23-74-403.
Insurance.
Delinquency proceedings.
Assets, §23-68-120.
Mutual assessment life and disability insurers.
Benefits not subject to attachment, §23-72-114.
Stipulated premium insurers.
Benefits not subject to attachment, §23-71-112.
Lotteries.
Withholding from prizes, §23-115-403.

ATTORNEY GENERAL.
Consumer utilities rate advocacy division, §§23-4-301 to 23-4-307.
Fraternal benefit societies.
Domestic societies.
Injunctions.
Commencing action, §23-74-606.
Injunctions.
Recognition of proceedings.
Application or petition made by attorney general upon request of commissioner, §23-74-608.
Public utilities.
Consumer utilities rate advocacy division, §§23-4-301 to 23-4-307.
Railroads.
Passes.
Permitted to accept and use pass, §23-4-804.

ATTORNEYS AT LAW.
Bonds, surety.
Insurance.
Reciprocal insurers, §23-70-110.
Definitions.
Legal insurance, §23-91-203.
Ethics.
Legal insurance, §23-91-221.

ATTORNEYS AT LAW —Cont'd
Insurance.
Actions.
Suits against insurers.
Damages and attorney's fees on loss claims, §23-79-208.
Examination of insurers.
Commissioner may retain attorneys, §23-61-203.
Legal insurance, §§23-91-201 to 23-91-227.
Reciprocal insurers.
Bonds, surety, §23-70-110.
Action on bond, §23-70-110.
Deposit in lieu of bond, §23-70-110.
Power of attorney, §23-70-108.
Legal insurance.
Accounts and accounting.
Separate accounts, §23-91-213.
Agents.
Licenses, §23-91-219.
Management and exclusive agency contracts, §23-91-214.
Annual report, §23-91-215.
Applicability of general insurance law.
To all legal insurers, hearings and appeals, §23-91-204.
To insurance companies, §23-91-204.
Trade practices, §23-91-218.
Assets.
Investments, §23-91-217.
Certificates of authority.
Applications, §23-91-208.
Public documents, §23-91-227.
Conditions for issuing, §23-91-209.
Issuance, §23-91-209.
Required, §23-91-208.
Suspension, revocation or refusal to renew, §23-91-222.
Citation of subchapter, §23-91-201.
Contracts.
Management and exclusive agency contracts, §23-91-214.
Definitions, §23-91-203.
Ethics, §23-91-221.
Examinations.
Grounds, §23-91-220.
Exemptions, §23-91-206.
Legal referral services program.
Requirements prior to administering, §23-91-206.
Fees.
Payment to commissioner, §23-91-225.
General insurance law.
Applicability to all legal insurers, hearings and appeals, §23-91-204.

ATTORNEYS AT LAW —Cont'd
Legal insurance —Cont'd
General insurance law —Cont'd
Applicability to insurance companies, §23-91-204.
Hearings.
Applicability of general insurance law, §23-91-204.
Investments.
Assets, §23-91-217.
Legal referral services program.
Requirements of persons exempt from provisions of subchapter prior to administering, §23-91-206.
Legislative declaration, §23-91-202.
Licenses.
Agents, §23-91-219.
Liquidation, §23-91-223.
Management and exclusive agency contracts, §23-91-214.
Penalties.
Generally, §23-91-207.
Policies.
Forms.
Approval, §23-91-212.
Regulation, §23-91-210.
Premiums.
Taxation, §23-91-226.
Professional ethics, §23-91-221.
Public documents, §23-91-227.
Purposes, §23-91-202.
Rates.
Approval, §23-91-212.
Regulation, §23-91-211.
Regulation of policy forms, §23-91-210.
Regulation of rates, §23-91-211.
Rehabilitation, §23-91-223.
Reports.
Annual report, §23-91-215.
Exempt persons, §23-91-206.
Public documents, §23-91-227.
Reserves.
Maintenance, §23-91-216.
Revocation of certificate of authority, §23-91-222.
Rules and regulations.
Authority to promulgate, §23-91-224.
Separate accounts, §23-91-213.
Service of process, §23-91-208.
Short title, §23-91-201.
Suspension of certificate of authority, §23-91-222.
Taxation, §23-91-226.
Trade practices, §23-91-218.
Unauthorized insurance, §23-91-205.
Violations.
Penalty provisions, §23-91-207.

ATTORNEYS AT LAW —Cont'd
Legal insurance —Cont'd
Violations —Cont'd
Unauthorized insurance, §23-91-205.
Licenses.
Legal insurance.
Agents, §23-91-219.
Multiple employer trust and self-insured plans.
Bonds, surety.
Required.
Exception, §23-92-204.
Prepaid legal insurance, §§23-91-201 to 23-91-227.
Professional ethics.
Legal insurance, §23-91-221.
Public service commission.
Assistant general counsel, §23-2-106.
Practice of law.
Restrictions on activities of members and employees, §23-2-107.
Railroads.
Suits against railroad companies for violations.
Attorney's fee taxed, §23-12-105.
Reports.
Legal insurance, §§23-91-215, 23-91-227.
Exempt persons, §23-91-206.

ATTORNEYS' FEES.
Choice of health care providers by patients.
Enforcement of provisions by providers, §23-99-207.
Insurance claims.
Suits against insurers, §23-79-208.
Allowance of attorney's fees in suits to terminate, modify or reinstate policies, §23-79-209.
Unauthorized insurers.
Actions against, §23-65-205.
Loan brokers.
Advance fee loan brokers.
Action for violations of subchapter, §23-39-405.
Mortgages and deeds of trust.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Railroads.
Suits against railroad companies for violations.
Attorney's fees taxed, §23-12-105.
Recreational vehicle franchises.
Actions to recover damages, §23-112-1022.

AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance.
Coverage for speech-language pathology services, §23-79-157.

AUDIO RECORDINGS.
Interception of telephone or telegraph messages, §23-17-107.

AUDITOR OF STATE.
Railroad passes.
Permitted to accept and use pass, §23-4-804.

AUDITS AND AUDITORS.
Lifeline individual verification effort corporation.
Annual audit, §23-16-410.
Lotteries.
Oversight of commission, §23-115-206.
Presence of auditor to determine accuracy of results and winner, §23-115-403.
Savings and loan associations.
Annual audit and examination procedure, §23-37-210.
Title insurance.
Audit of insurer, §23-103-411.

AUTISM.
Health insurance.
Autism spectrum disorders.
Required coverage, §23-99-418.

AUTOMATIC TELLER MACHINES, §§23-48-801 to 23-48-810.
Attendants for terminals, §23-48-807.
Confidentiality of information.
Account information, §23-48-808.
Definitions, §23-48-801.
Fees, §23-32-208.
Shared terminals, §23-48-810.
Financial institutions.
Sharing, §23-32-208.
Interconnected terminals, §23-48-806.
Location, §23-48-802.
Notice of establishment, §23-48-803.
Out-of-state banks, §23-48-804.
Point-of-sale terminals excluded, §23-48-805.

AUTOMATIC TELLER MACHINES —Cont'd
Powers of banks.
Conformed powers of national banks, §23-48-809.
Sharing of terminals, §§23-32-208, 23-48-810.
Verification of transactions, §23-48-807.

AUTOMOBILE CLUBS OR ASSOCIATIONS.
Agent.
License, §23-77-108.
Fee, §23-77-108.
Certificates of authority.
Applications, §23-77-106.
Fees, §23-77-106.
Issuance, §23-77-106.
Power to grant, §23-77-105.
Required, §23-77-106.
Suspension or revocation, §23-77-107.
Definitions, §23-77-101.
Exclusive authority for operation of clubs and associations, §23-77-102.
Fees.
Agents.
Annual license fee, §23-77-108.
Certificates of authority, §23-77-106.
Financial reporting, §23-77-106.
Hearings.
Insurance commissioner may conduct hearings, §23-77-105.
Suspension or revocation of certificate, §23-77-107.
Insurance commissioner.
Information.
Duty to provide, §23-77-109.
Powers, §§23-77-104, 23-77-105.
Licenses.
Agents, §23-77-108.
Penalties.
Violations of provisions, §23-77-103.
Registered agent.
Service of process, §23-77-106.
Reports.
Annual report, §23-77-109.
Financial reporting, §23-77-106.
Rules and regulations.
Insurance commissioner, §23-77-105.
Violations of rules.
Penalties, §23-77-103.
Service of process, §23-77-106.
Violations of provisions.
Penalties, §23-77-103.

AUTOPSIES.
Health insurance.
Policy provisions, §23-85-115.

AVIATION.
Air commerce, §§23-14-101 to 23-14-128.

B

BANK DEPARTMENT, §§23-46-201 to 23-46-212.
Bond issues to fund facilities for department, §23-46-202.
Bonds, surety.
Employee bonds, §23-46-208.
Commissioner.
Appointment and removal, §23-46-204.
Immunity from liability, §23-46-206.
Powers and duties, §23-46-205.
Emergency powers, §23-46-212.
Proceedings before, §§23-46-401 to 23-46-407.
Reports, §23-46-210.
Trust powers of bank.
Authority of commissioner, §23-47-701.
Confidentiality of information.
Records, §23-46-101.
Travel expenses of staff, §23-46-206.
Conflicts of interest.
Staff, §23-46-207.
Creation, §23-46-201.
Disposition of fees and revenues, §23-46-209.
Emergency powers of commissioner, §23-46-212.
Employee bonds, §23-46-208.
Evidence.
Sealed instruments, §23-46-203.
Fees.
Disposition, §23-46-209.
Sealed instruments, §23-46-203.
Offices, §23-46-202.
Records, §23-46-209.
Confidentiality, §23-46-101.
Retention, §23-46-211.
Reports.
Commissioner's reports, §23-46-210.
Monthly financial reports, §23-46-209.
Seal, §23-46-203.
Staff, §23-46-206.
Conflicts of interest, §23-46-207.
Employee bonds, §23-46-208.

BANKER'S BANKS, §23-48-325.

BANK HOLDING COMPANIES, §§23-48-401 to 23-48-406.
Administration of subchapter, §23-48-404.
Applicability of subchapter, §23-48-402.

BANK HOLDING COMPANIES —Cont'd
Assets.
Limitations on acquisition, §23-48-406.
Definitions, §23-48-401.
Merger into state bank, §23-48-509.
Penalties for violations, §23-48-403.
Stock.
Limitations on acquisitions of bank stock or assets, §23-48-406.
Subsidiaries.
Limitation on ownership or control, §23-48-405.

BANKING BOARD, §§23-46-301 to 23-46-305.
Appeals.
Final decisions, §23-46-407.
Applicability of provisions, §23-46-401.
Applications.
Consideration, §23-46-305.
Fees, §23-46-404.
Rules and regulations, §23-46-404.
Composition, §23-46-301.
Confidentiality of information.
Records, §23-46-101.
Creation, §23-46-301.
Fees.
Applications, §23-46-404.
Filings with commissioner.
Effect, §23-46-304.
Hearings, §23-46-406.
Final decisions, §23-46-407.
Notice of hearing, §23-46-405.
Investigations, §23-46-405.
Meetings, §23-46-402.
Notice.
Applications file, §23-46-403.
Hearings, §23-46-405.
Meetings, §23-46-402.
Powers, §23-46-304.
Records.
Confidentiality, §23-46-101.
Rules and regulations.
Applications, §23-46-404.
Special members, §23-46-302.
Studies of state statutes, §23-46-303.

BANKRUPTCY AND INSOLVENCY.
Continuing care providers.
Resident's statutory lien on real and personal property, §23-93-113.
Industrial loan institutions.
Bank commissioner taking charge of institution, §23-36-116.
Lotteries.
Retailers, fiduciary duties upon insolvency, §23-115-605.

BANKS AND FINANCIAL INSTITUTIONS, §§23-45-101 to 23-50-110.
Accounts.
Multiple persons, §23-32-207.
Acquisitions.
Purchase or assumption of another depository institution, §23-48-510.
Adverse claims to deposits, §23-47-205.
Affiliates.
Agents for affiliates, §23-48-105.
Examinations, §23-46-504.
Loans to affiliates or insiders, §23-47-504.
Subsidiary trust companies.
Exclusion of certain accounts from substitution agreement, §23-47-804.
Substitution agreements, §23-47-803.
Trust powers, §23-47-710.
Agents.
Affiliates, §23-48-105.
Certificates of deposit, §§23-32-501 to 23-32-509, 23-47-301 to 23-47-309.
Obligation to inquire into limitations on powers, §23-48-104.
Out-of-state banks.
Registered agents, §23-48-1004.
Change of agent, §23-48-1005.
Resignation, §23-48-1006.
Agricultural lands.
Loans secured by liens.
Prepayment privileges, §23-32-203.
Application for incorporation, §23-48-301.
Investigations, §23-48-304.
Arkansas banking code of 1997.
Short title, §23-45-101.
Arkansas business corporation act.
Applicability, §23-48-326.
Articles of incorporation.
Affidavit of expenses, §23-48-303.
Amendment to charter, §23-48-307.
Filing, §23-48-308.
Application for incorporation, §23-48-301.
Certificate of incorporation, §23-48-305.
Contents of application, §23-48-301.
Investigation of new charter applications, §23-48-304.
Organizational expenses.
Affidavits, §23-48-303.
Relocation of place of business, §23-48-306.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Assets.
Bank holding companies.
Limitations on acquisition, §23-48-406.
Sale of assets.
Dissolution and liquidation, §23-49-108.
Authorized entities, §23-45-104.
Automatic teller machines, §§23-48-801 to 23-48-810.
Attendants for terminals, §23-48-807.
Confidentiality of account information, §23-48-808.
Definitions, §23-48-801.
Fees.
Shared terminals, §23-48-810.
Interconnected terminals, §23-48-806.
Location, §23-48-802.
Notice of establishment, §23-48-803.
Out-of-state banks, §23-48-804.
Point-of-sale terminals excluded, §23-48-805.
Powers of banks.
Conformed powers of national banks, §23-48-809.
Sharing of terminals, §23-48-810.
Verification of transactions, §23-48-807.
Banker's banks, §23-48-325.
Bank holding companies, §§23-48-401 to 23-48-406.
Administration of subchapter, §23-48-404.
Applicability of subchapter, §23-48-402.
Assets.
Limitations on acquisition, §23-48-406.
Definitions, §23-48-401.
Merger into state bank, §23-48-509.
Penalties for violations, §23-48-403.
Stock.
Limitations on acquisitions of bank stock or assets, §23-48-406.
Subsidiaries.
Limitations of ownership and control, §23-48-405.
Banking board, §§23-46-301 to 23-46-305.
Appeals.
Final decisions, §23-46-407.
Applicability of provisions, §23-46-401.
Applications.
Consideration, §23-46-305.
Fees, §23-46-404.
Rules and regulations, §23-46-404.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Banking board —Cont'd
Composition, §23-46-301.
Confidentiality of information, §23-46-101.
Creation, §23-46-301.
Filings with commissioner.
Effect, §23-46-304.
Hearings, §23-46-406.
Final decisions, §23-46-407.
Investigations, §23-46-405.
Meetings, §23-46-402.
Notice.
Applications file, §23-46-403.
Hearings, §23-46-405.
Meetings, §23-46-402.
Powers, §23-46-304.
Proceedings before, §§23-46-401 to 23-46-407.
Special members, §23-46-302.
Studies of state statutes, §23-46-303.
Bank service companies, §23-47-603.
Bonds, surety.
Adverse claims to deposits, §23-47-205.
Bank department staff, §23-46-208.
Exemptions, §§23-32-301 to 23-32-305.
Applicability of other laws, §23-32-303.
Construction and interpretation, §23-32-304.
Posting bond in certain transactions, §23-48-106.
Purpose of act, §23-32-302.
Title of act, §23-32-301.
Transactions exempt from posting bond, §23-32-305.
Subsidiary trust companies.
Bond to secure performance, §23-47-806.
Branches, §§23-48-701 to 23-48-705.
Definitions, §23-48-701.
Establishment, §23-48-702.
Filing fee, §23-48-703.
Full service branches.
Application to establish, §23-48-703.
Establishment, §23-48-702.
Procedure, §23-48-703.
Notice of termination, §23-48-705.
Protest of application, §23-48-703.
Standards, §23-48-703.
Grandfather clause, §23-48-704.
Interstate mergers and branching, §§23-48-902 to 23-48-911.
Limited purchase offices.
Establishment, §23-48-702.
Pre-existing facilities, §23-48-704.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Branches —Cont'd
Presumption of suitability for branch location, §23-48-702.
Relocation, §23-48-702.
Sale or purchase of individual branch.
Failed institutions, §23-48-511.
Termination.
Notice, §23-48-705.
Bribery, §23-50-106.
Acceptance of bribes, §23-50-108.
Buildings.
Bank premises.
Acquisition, §23-47-103.
Capital.
Impaired capital, §23-48-312.
Minimum capital requirements, §23-48-310.
Capital development companies, §23-47-604.
Capital funds.
Organizational expenses cannot be paid from, §23-48-302.
Capital notes, §23-48-315.
Casualty insurance.
Mortgage loans.
Replacement cost coverage, §§23-32-206, 23-47-510.
CBCT's, §§23-48-801 to 23-48-810.
Certificate of incorporation, §23-48-305.
Issuance under new law, §23-45-104.
Certificates of deposit.
Agency designation, §§23-32-501 to 23-32-509.
Conflict of laws, §23-32-509.
Definitions, §§23-32-501, 23-47-301.
Designation of agent, §§23-32-504, 23-47-304.
Disability or incapacity, §23-32-504.
Discharge of financial institution, §§23-32-507, 23-47-307.
Effect on other laws, §23-47-309.
Forms, §§23-32-503, 23-47-303.
Payments to agent, §§23-32-505, 23-47-305.
Discharge of bank, §23-47-307.
Payments to minors, §§23-32-506, 23-47-306.
Scope, §§23-32-502, 23-47-302.
Setoffs, §§23-32-508, 23-47-308.
Termination, §§23-32-504, 23-47-304.
Multiple persons, §23-32-207.
Certification of check with insufficient funds, §23-50-110.
Charters.
Amendments, §23-48-307.
Filing, §23-48-308.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Charters —Cont'd
Application for incorporation, §23-48-301.
Existing financial institutions.
Effect of 1997 law, §23-45-103.
Failed institutions.
New charter to protect depositors, §23-48-511.
Forfeiture, §23-50-102.
Investigations.
Applications, §23-48-304.
Organizational expenses, §23-48-302.
Affidavits, §23-48-303.
Promoter's fees prohibited, §23-48-303.
Checking accounts, §23-32-207.
Checks.
Deposits.
Settlement of checks at par, §23-47-206.
Insufficient funds.
Certification of check with insufficient funds, §23-50-110.
Chief executive officer.
Changes.
Report to commissioner, §23-46-512.
Loans.
Liability for illegal loans, §23-47-505.
Small town banks.
Purchase or construction of dwelling, §23-47-101.
Circulation of false rumors, §23-50-104.
Collateral.
Power to hold and sell, §23-47-507.
Commissioner.
Reports, §23-46-210.
Community development corporations, §23-47-605.
Compensating tax.
Applicability, §23-48-101.
Savings and loan institutions.
Applicability of act, §23-37-108.
Confidentiality of information.
Automatic teller machines, §23-48-808.
Bank department and banking board records, §23-46-101.
Conflict of laws.
Agency designation on certificates of deposit, §23-32-509.
Construction and interpretation.
Headings and captions, §23-45-105.
Rules of construction, §23-45-106.
Surety bond exemption act, §23-32-304.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Contracts.
Dissolution and liquidation.
Rejection of executory contracts, §23-49-112.
Control.
Changes in control, §23-48-317.
Conversions.
Continuation of corporate entity, §23-48-507.
Definitions, §23-48-501.
Dissenting stockholders, §23-48-506.
Names.
Use of old name, §23-48-507.
National bank into state bank, §23-48-504.
National savings and loan association into state bank, §23-48-504.
Resulting banks.
Time for conformity with state law, §23-48-508.
State bank into national bank, §23-48-502.
Trust powers.
No authority to exercise, §23-48-512.
Corporations.
Applicability of business corporation act, §23-48-326.
Costs.
Organizational expenses, §23-48-302.
Plans of exchange.
Appraiser's expenses, §23-48-603.
Safe deposit boxes.
Nonpayment of rent, §23-47-906.
Credit unions, §§23-35-101 to 23-35-805.
Criminal law and procedure.
Acceptance of bribes, §23-50-108.
Bank holding company violations, §23-48-403.
Bribery, §23-50-106.
Certification of check with insufficient funds, §23-50-110.
Circulation of false rumors, §23-50-104.
Embezzlement or misuse of funds, §23-50-105.
Examiners.
Disclosure or falsification of information, §23-50-109.
False reports by commissioners or examiners, §23-50-108.
Falsification of records, §§23-50-106, 23-50-107.
Loans secured by liens on agricultural lands.
Violation of prepayment privileges, §23-32-203.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Criminal law and procedure —Cont'd
Misleading use of name or title, §23-50-103.
Runs on banks.
Causing, §23-50-104.
Trust funds.
Loans of trust funds to officers and employees, §23-47-707.
Unauthorized use of name or title, §23-32-209.
Customer-bank communication terminals.
Sharing, §23-32-208.
Deferred income investment accounts, §23-47-208.
Definitions, §23-45-102.
Mergers, conversions or other corporate actions, §23-48-501.
Department, §§23-46-201 to 23-46-212.
Bond issues to fund facilities, §23-46-202.
Bonds, surety.
Staff, §23-46-208.
Commissioner.
Appointment and removal, §23-46-204.
Immunity from liability, §23-46-206.
Powers and duties, §23-46-205.
Emergency powers, §23-46-212.
Proceedings before, §§23-46-401 to 23-46-407.
Trust powers, §23-47-701.
Confidentiality of information, §23-46-101.
Conflicts of interest.
Staff, §23-46-207.
Creation, §23-46-201.
Disposition of fees and revenues, §23-46-209.
Dissolution and liquidation.
Possession by department, §23-49-102.
Injunction against commissioner, §23-49-103.
Notice of possession, §23-49-105.
Termination, §23-49-104.
Emergency powers, §23-46-212.
Employee bonds, §23-46-208.
Offices, §23-46-202.
Records, §23-46-209.
Retention, §23-46-211.
Reports.
Commissioner's reports, §23-46-210.
Monthly financial reports, §23-46-209.
Seal, §23-46-203.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Department —Cont'd
Staff, §23-46-206.
Conflicts of interest, §23-46-207.
Employee bonds, §23-46-208.
Deposits, §§23-32-207, 23-47-201 to 23-47-208.
Adverse claims to deposits, §23-47-205.
Checks.
Settlement of checks at par, §23-47-206.
Deferred income investment accounts, §23-47-208.
Minors.
Deposits by minors, §23-47-202.
Multiple-party deposits, §23-47-204.
Notice of rules, §23-47-201.
Overdrafts.
Payments, §23-47-207.
Rules governing.
Notice of rules, §23-47-201.
Securing deposits, §23-47-203.
Subsidiary trust companies, §23-47-805.
Totten trusts, §23-47-204.
Directors.
Changes.
Report to commissioner, §23-46-512.
Loans.
Liability for illegal loans, §23-47-505.
Requirements, §23-48-322.
Standards of conduct, §23-48-322.
Dissolution and liquidation, §§23-49-101 to 23-49-120.
Articles of dissolution, §23-49-117.
Execution and filing, §23-49-118.
Certificate of dissolution, §23-49-118.
Claims.
Presentation and notice, §23-49-109.
Contracts.
Rejection of executory contracts, §23-49-112.
Definitions, §23-49-101.
Federal deposit insurance agency.
Subrogation to rights of depositors, §23-49-113.
Injunction against commissioner, §23-49-103.
Leases.
Rejection of leases, §23-49-112.
Payment of claims, §23-49-111.
Possession by department, §23-49-102.
Injunction against commissioner, §23-49-103.
Notice of possession, §23-49-105.
Termination, §23-49-104.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Dissolution and liquidation —Cont'd
Possession by department —Cont'd
Voluntary placement, §23-49-120.
Presentation of claims.
Late claims, §23-49-110.
Receiver.
Actions for enforcement of rights, §23-49-116.
Appointment, §23-49-106.
Powers, §23-49-107.
Safe deposit boxes.
Notice of safekeeping, §23-49-115.
Sale of assets, §23-49-108.
Statute of limitation on claims, §23-49-109.
Successors to fiduciaries, §23-49-114.
Voluntary liquidation, §23-49-119.
Dividends.
Capital stock, §23-48-311.
Payment, §23-48-203.
Duties, §§23-32-201 to 23-32-210.
Electronic funds transfers.
Stop-payment orders, §23-32-210.
Embezzlement, §23-50-105.
Examinations, §§23-46-503 to 23-46-509.
Affiliates, §23-46-504.
Fees, §23-46-509.
Failure to pay, §23-46-510.
Information sharing with state or federal agencies, §23-46-507.
Interstate mergers and branching, §23-48-907.
Noncooperation with examiners, §23-46-508.
Procedure, §23-46-506.
Reports, §23-46-506.
Special examinations.
Noncompliance with banking laws, §23-46-505.
Timing, §23-46-503.
Violation of banking laws.
Special examinations, §23-46-505.
Examiners.
Disclosure or falsification of information, §23-50-109.
Existing financial institutions.
Effect of 1997 law, §23-45-103.
Failed institutions.
New charter of branch facility.
Special grant authority, §23-48-511.
Sale or purchase of individual branches, §23-48-511.
Trust accounts.
Priority of liens, §23-47-705.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Falsification of records, §§23-50-106, 23-50-107.
Farm credit act of 1971.
Bond issues.
Authorized investments, §23-32-201.
Federal deposit insurance agency.
Dissolution and liquidation.
Subrogation to rights of depositors, §23-49-113.
Federal reserve system.
Membership, §23-48-201.
Fees.
Application to establish branches.
Filing fee, §23-48-703.
Automatic teller machines, §23-32-208.
Shared terminals, §23-48-810.
Banking board.
Applications, §23-46-404.
Examinations, §23-46-509.
Failure to pay, §23-46-510.
Interstate mergers and branching.
Collection and dispersal, §23-48-907.
Filing fee, §23-48-905.
Organization and incorporation.
Promoter's fees prohibited, §23-48-303.
Registered office and registered agent.
Filings under provisions, §23-48-327.
Fiduciaries.
Dissolution and liquidation.
Successors to fiduciaries, §23-49-114.
Fines.
Embezzlement or misuse of funds, §23-50-105.
Forcible entry and detainer.
Surety bond exemptions, §23-32-305.
Foreclosures.
Surety bond exemption, §23-32-305.
Foreign countries.
Branches in foreign countries or dependencies, §23-48-702.
Foreign investor companies, §§23-32-401 to 23-32-406.
Forms.
Certificates of deposit.
Agency designation, §23-47-303.
Funds.
Organizational expense fund, §23-48-302.
Garnishment.
Surety bond exemption, §23-32-305.
Gross receipts tax.
Applicability, §23-48-101.
Savings and loan institutions.
Applicability of provisions, §23-37-108.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Hearings.
Banking board, §23-46-406.
Final decisions, §23-46-407.
Notice of hearings, §23-46-405.
Revocation of trust powers, §23-47-709.
Holidays, §23-48-103.
Industrial loan institutions, §§23-36-101 to 23-36-117.
Interstate mergers and branching, §§23-48-902 to 23-48-911.
Applicability.
Severability of provisions, §23-48-911.
Applications, §23-48-902.
Authority of state banks, §23-48-902.
Authority to conduct transactions, §23-48-903.
Authorized activities, §23-48-906.
Commissioner.
Enforcement, §23-48-908.
Regulations, §23-48-909.
Cooperative agreements, §23-48-907.
Enforcement, §23-48-908.
Examinations, §23-48-907.
Fees.
Collection and dispersal, §23-48-907.
Filing, §23-48-905.
Notice of change of control.
Out-of-state banks, §23-48-910.
Notice of proposed merger, §23-48-905.
Oversight, §23-48-907.
Permitted transactions, §23-48-903.
Powers, §23-48-906.
Regulations, §23-48-909.
Reports, §23-48-907.
Requirements, §23-48-902.
Severability of provisions, §23-48-911.
Investigations.
Applications for incorporation, §23-48-304.
Banking board, §23-46-405.
Investments.
Powers and limitations, §23-47-401.
Trust accounts.
Separate accounts required, §23-47-705.
Joint accounts.
Multiple-party deposits, §23-47-204.
Leases.
Dissolution and liquidation.
Rejection of leases, §23-49-112.
Loans, §§23-47-501 to 23-47-510.
Affiliates.
Loans to affiliates or insiders, §23-47-504.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Loans —Cont'd
Agricultural liens as securities, §23-32-203.
Collateral.
Power to hold and sell, §23-47-507.
Debt collection.
Disposition of real estate acquired through debt collections, §23-47-508.
Exceptions, §23-47-502.
Illegal loans.
Liability of officer or director, §23-47-505.
Inclusions, §23-47-502.
Insiders, §23-47-504.
Limits, §23-47-501.
Inclusions and exceptions, §23-47-502.
Maximum, §23-47-501.
Minors, §23-47-509.
Mortgage loans.
Casualty insurance, §23-47-510.
Sale of certain mortgage loans, §23-32-204.
Sale of certain mortgage loans, §23-47-506.
Servicemen's Readjustment Act, §23-32-205.
Stock.
Loans involving bank's own stock, §23-47-503.
Trust funds.
Loans to officers and employees prohibited, §23-47-707.
Meetings.
Shareholders, §23-48-318.
Notice of annual meeting, §23-48-319.
Quorum, §23-48-320.
Special stockholder meetings, §23-48-318.
Mergers.
Bank holding company into state bank, §23-48-509.
Bank into state bank, §23-48-503.
Continuation of corporate entity, §23-48-507.
Definitions, §23-48-501.
Dissenting stockholders, §23-48-506.
Interstate mergers and branching, §§23-48-902 to 23-48-911.
Names.
Use of old name, §23-48-507.
Resulting banks.
Time for conformity with state law, §23-48-508.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Mergers —Cont'd
Savings and loan association into state bank, §23-48-503.
State bank into national bank, §23-48-502.
State bank into out-of-state state-chartered bank, §23-48-505.
Trust powers.
No authority to exercise, §23-48-512.
Minimum capital requirements, §23-48-310.
Minors.
Certificates of deposit.
Payments to minors, §23-47-306.
Deposits by minors, §23-47-202.
Loans to minors, §23-47-509.
Safe deposit boxes.
Leases to minors, §23-47-903.
Misleading actions or use of words by unauthorized persons, §23-32-209.
Misuse of funds.
Officers, directors or employees, §23-50-105.
Mortgages and deeds of trust.
Casualty insurance.
Replacement cost coverage, §§23-32-206, 23-47-510.
Mortgage bankers, brokers and servicers.
Licensing and regulation generally, §§23-39-501 to 23-39-518.
Sale of certain mortgage loans, §§23-32-204, 23-47-506.
Multiple parties.
Deposits, §23-47-204.
Safe deposit box leases, §23-47-902.
Names.
Mergers, conversions or other corporate actions.
Use of old name, §23-48-507.
Misleading use of name or title, §23-50-103.
Reservation and registration of names, §23-48-309.
Restrictions on use of certain phrases, §23-32-209.
Restrictions on use of names, §23-32-209.
Notice.
Adverse claims to deposits, §23-47-205.
Automatic teller machines.
Establishment of terminal, §23-48-803.
Branches.
Termination of full service branches, §23-48-705.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Notice —Cont'd
Deposits.
Notice of rules, §23-47-201.
Dissolution and liquidation.
Notice of claims, §23-49-109.
Notice of safekeeping of safe deposit boxes, §23-49-115.
Possession by department, §§23-49-102, 23-49-105.
Failure to make report or pay fees, §23-46-510.
Interstate mergers and branching.
Change of control of out-of-state banks, §23-48-910.
Notice of proposed merger, §23-48-905.
Plans of exchange.
Meeting to consider, §23-48-602.
Revocation of trust powers, §23-47-709.
Shareholder meetings.
Notice of annual meeting, §23-48-319.
Notice of special meetings, §23-48-318.
Stockholder meetings, §23-48-318.
Officers, §23-48-323.
Acknowledgments, §23-48-324.
Notaries public, §23-48-324.
Trust powers.
Unauthorized loans, §23-47-707.
Offices.
Out-of-state banks.
Registered offices, §23-48-1004.
Change of office, §23-48-1005.
Operating subsidiaries, §23-47-601.
Organizational expense fund, §23-48-302.
Organization and management, §§23-48-301 to 23-48-326.
Out-of-state banks.
Amended certificate of authority, §23-48-1002.
Appeal from revocation of certificate of authority, §23-48-1011.
Automatic teller machines, §23-48-804.
Branches.
Establishment, §23-48-702.
Certificate of authority.
Amendment, §23-48-1002.
Application, §23-48-1001.
Effect, §23-48-1003.
Revocation, §23-48-1009.
Appeal, §23-48-1011.
Effect, §23-48-1010.
Certificate of existence, §23-48-1001.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Out-of-state banks —Cont'd
Certificate of withdrawal, §23-48-1008.
Interstate mergers and branching, §§23-48-902 to 23-48-911.
Registered agent, §23-48-1004.
Change of agent, §23-48-1005.
Resignation, §23-48-1006.
Registered office, §23-48-1004.
Change of office, §23-48-1005.
Registration, §§23-48-1001 to 23-48-1011.
Revocation of authority, §23-48-1009.
Appeal, §23-48-1011.
Effect, §23-48-1010.
Rights and privileges, §23-48-1003.
Service of process, §23-48-1007.
State-chartered banks.
Merger of state bank into, §23-48-505.
Withdrawal, §23-48-1008.
Overdrafts.
Payment, §23-47-207.
Personal liability.
Payment of overdrafts, §23-47-207.
Plans of exchange, §§23-48-601 to 23-48-605.
Abandonment, §23-48-602.
Adoption procedure, §23-48-602.
Appraiser.
Cost and expenses, §23-48-603.
Authority to adopt, §23-48-601.
Commissioner's approval required, §23-48-601.
Contents, §23-48-601.
Creditors and depositors.
Mutual nonliability, §23-48-605.
Demand for payment.
Dissenting shareholders, §23-48-603.
Dissent, §§23-48-603, 23-48-604.
Effect of exchange, §23-48-604.
Powers.
Acquisition of bank premises, §23-47-103.
Effect of 1997 law, §23-45-103.
Generally, §23-47-101.
Investment powers and limitations, §23-47-401.
Loans.
Power to hold and sell collateral, §23-47-507.
Real estate salesmen or brokers.
Prohibition, §23-47-104.
Stock.
Acquisition and disposition of own stock, §23-47-102.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Powers —Cont'd
Trust powers, §§23-47-701 to 23-47-710.
Powers and duties, §§23-32-201 to 23-32-210.
Powers of attorney.
Filing, §23-48-602.
Obligation to inquire into limitations upon powers, §23-48-104.
Separation of entities maintained, §23-48-605.
Premises.
Acquisition of bank premises, §23-47-103.
Relocation of place of business, §23-48-306.
Prohibited operations.
Loans of trust funds to officers and employees, §23-47-707.
Trust powers, §23-47-705.
Prosecution of violations, §23-50-101.
Real estate brokers and salesmen.
Prohibition, §23-47-104.
Real estate subsidiaries, §23-47-602.
Records.
Bank department records, §23-46-209.
Confidentiality, §23-46-101.
Retention, §23-46-211.
Confidentiality, §23-46-101.
Falsification, §§23-50-106, 23-50-107.
Retention, §23-46-511.
Trust powers.
Separate books and records, §23-47-704.
Registered agent, §23-48-327.
Registered office, §23-48-327.
Registration of out-of-state banks, §§23-48-1001 to 23-48-1011.
Relocation.
Branches, §23-48-702.
Place of business, §23-48-306.
Reorganization through plan of exchange, §§23-48-601 to 23-48-605.
Replevin.
Surety bond exemption, §23-32-305.
Reports.
Bank department.
Monthly financial reports, §23-46-209.
Call for reports, §23-46-501.
Changes in chief executive officer or director, §23-46-512.
Examinations, §23-46-506.
Examiners.
Falsification of report, §§23-50-108, 23-50-109.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Reports —Cont'd
Failure to make, §23-46-510.
False reports by commissioner or examiner, §§23-50-108, 23-50-109.
Interstate mergers and branching, §23-48-907.
Statements on call, §23-46-502.
Reserves.
Membership in federal reserve system, §23-48-201.
Requirements, §23-48-202.
Run on banks.
Causing, §23-50-104.
Safe deposit boxes, §§23-47-901 to 23-47-906.
Adverse claims to contents, §23-47-905.
Dissolution and liquidation.
Notice of safekeeping, §23-49-115.
Liability for losses, §23-47-901.
Limiting right of access.
Compliance with security procedures, §23-47-904.
Minors, §23-47-903.
Multiple-party leases, §23-47-902.
Nonpayment of rent, §23-47-906.
Security procedures.
Compliance required, §23-47-904.
Savings accounts, §23-32-207.
Savings and loan associations, §§23-37-101 to 23-37-706.
Securing deposits, §23-47-203.
Securities regulation, §§23-42-101 to 23-42-509.
Servicemen's Readjustment Act.
Loans, §23-32-205.
Service of process.
Out-of-state banks, §23-48-1007.
Registered agent for service, §23-48-327.
Setoffs.
Agency accounts, §§23-32-508, 23-47-308.
Shareholders.
Liability, §23-48-312.
Meetings, §23-48-318.
Notice of annual meeting, §23-48-319.
Notice of special meetings, §23-48-318.
Quorum, §23-48-320.
Voting, §23-48-320.
Mergers, conversions or other corporate actions.
Dissenting stockholders, §23-48-506.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Shareholders —Cont'd
Plans of exchange.
Dissenting shareholders, §23-48-603.
Preemptive rights, §23-48-314.
Short title, §23-45-101.
Small business investment companies, §23-47-606.
Statements on call, §23-46-502.
Statutes.
Headings and captions, §23-45-105.
Stock.
Acquisition and disposition of own stock, §23-47-102.
Assessments on stock, §23-48-312.
Bank holding companies.
Limitations on acquisitions of bank stock or assets, §23-48-406.
Capital notes.
Issuance and sale, §23-48-315.
Capital stock.
Increase or decrease, §23-48-311.
Classes, §23-48-313.
Fractional shares, §23-48-313.
Industrial loan institutions, §§23-36-102, 23-36-103.
Liability of shareholders, §23-48-312.
Loans.
Loans involving bank's own stock, §23-47-503.
Preemptive rights of stockholders, §23-48-314.
Scrip, §23-48-313.
Transfers, §23-48-316.
Closing of transfer books, §23-48-321.
Record date, §23-48-321.
Subsidiaries, §§23-47-601 to 23-47-608.
Acquisition of banks authorized to do foreign banking, §23-47-607.
Bank holding companies.
Limitations on ownership and control, §23-48-405.
Bank service companies, §23-47-603.
Capital development companies, §23-47-604.
Community development corporations, §23-47-605.
Financial subsidiaries.
Authority to engage in activities through, §23-47-608.
Operating subsidiaries, §23-47-601.
Real estate subsidiaries, §23-47-602.
Small business investment companies, §23-47-606.
Trust companies, §§23-47-801 to 23-47-807.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Subsidiary trust companies, §§23-47-801 to 23-47-807.
Affiliates.
Exclusion of certain accounts from substitution agreement, §23-47-804.
Substitution agreements, §23-47-803.
Bond to secure performance, §23-47-806.
Creation, §23-47-802.
Definitions, §23-47-801.
Deposits, §23-47-805.
Dissolution and liquidation, §§23-49-101 to 23-49-120.
Liability for acts and omissions, §23-47-806.
Qualification as successor fiduciary, §23-47-807.
Surplus funds.
Organizational expenses cannot be paid from, §23-48-302.
Tenancies in common.
Multiple-party accounts, §23-47-204.
Tenants by the entireties.
Multiple-party accounts, §23-47-204.
Terms of officers, §23-48-323.
Totten trusts, §23-47-204.
Transfers.
Changes in control, §23-48-317.
Stock, §23-48-316.
Closing of transfer books, §23-48-321.
Trust companies.
Generally, §§23-51-101 to 23-51-199.
Subsidiary trust companies, §§23-47-801 to 23-47-807.
Trust companies no longer subject to banking laws, §23-48-102.
Trust powers, §§23-47-701 to 23-47-710.
Affidavits.
Execution, §23-47-706.
Affiliates, §23-47-710.
Applications.
Factors to be considered, §23-47-702.
Authority, §23-47-703.
Authorization.
Surrender, §23-47-708.
Commissioner's authority, §23-47-701.
Conversions.
No authority to exercise, §23-48-512.
Factors in determining grant of power, §23-47-702.
Investments.
Separate accounts, §23-47-705.

BANKS AND FINANCIAL INSTITUTIONS —Cont'd
Trust powers —Cont'd
Lawful exercise, §23-47-703.
Mergers.
No authority to exercise, §23-48-512.
Oath of trustee, §23-47-706.
Officers and employees.
Unauthorized loans, §23-47-707.
Prohibited operations, §23-47-705.
Loans of trust funds to officers and employees, §23-47-707.
Records.
Separate books and records, §23-47-704.
Revocation, §23-47-709.
Segregation of assets, §23-47-704.
Surrender of authorization, §23-47-708.
Termination.
Revocation, §23-47-709.
Surrender, §23-47-708.
Unauthorized activity, §23-45-104.
Violation of banking laws generally, §§23-50-101 to 23-50-110.
Withdrawals, §23-32-207.

BANK SERVICE COMPANIES, §23-47-603.

BELL AND WHISTLE ACT, §23-12-410.

BIDS AND BIDDING.
Lifeline individual verification effort corporation.
Purchase of telecommunication services, §23-16-412.

BILLS OF LADING.
Motor carriers, §23-13-252.
Railroads.
Charge specified in bill of lading controlling, §23-4-613.
Delivery of goods on payment of charges shown in bill of lading, §23-4-613.
Liability for refusal to deliver, §23-4-613.

BINGO.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

BLACK BOXES.
Motor vehicle event data recorders, §23-112-107.

BLOOD TESTS.
DNA testing.
Insurance.
Genetic nondiscrimination in insurance act, §23-66-320.

BOARDS AND COMMISSIONS.
Amusement ride safety advisory board, §23-89-518.
Lotteries.
Arkansas lottery commission, §§23-115-201 to 23-115-212.
Lottery retailer advisory board, §23-115-204.
Public service commission, §§23-2-101 to 23-2-112.
Public utilities.
Public service commission, §§23-2-101 to 23-2-112.
Telecommunications.
Intrastate carrier common line pool advisory procedural board, §23-17-417.

BOND ISSUES.
Banks.
Bank department, bond issues to fund facilities, §23-46-202.
Electricity.
Storm recovery securitization financing, §§23-18-901 to 23-18-912.
Farm credit act of 1971.
Authorized investments for financial institutions, §23-32-201.
Insurance.
Investments.
Corporate bonds and debentures, §23-63-814.
Improvement district obligations, §23-63-810.
Local industrial development bonds, §23-63-811.
Municipal or county utilities, §23-63-809.
Public obligations, §23-63-808.
United States government obligations, §23-63-806.

BONDS, SURETY.
Attorneys at law.
Insurance.
Reciprocal insurers, §23-70-110.
Aviation.
Air commerce.
Carriers, §23-14-112.

BONDS, SURETY —Cont'd
Banks.
Adverse claims to deposits, §23-47-205.
Bank department staff, §23-46-208.
Exemption from posting bond in certain transactions, §23-48-106.
Subsidiary trust companies.
Bond to secure performance, §23-47-806.
Common carriers.
Bonds, surety of carrier employees, §§23-16-201 to 23-16-207.
Contracts.
Surety contracts generally, §§23-63-1001 to 23-63-1004.
Estoppel.
Surety insurers.
Denying corporate power to be surety, §23-63-1004.
Financial institutions.
Exemptions, §§23-32-301 to 23-32-305.
Applicability of other laws, §23-32-303.
Construction and interpretation, §23-32-304.
Purpose of act, §23-32-302.
Title of act, §23-32-301.
Transactions exempt from posting bond, §23-32-305.
Forcible entry and detainer.
Exemption for banks, §23-48-106.
Foreclosures.
Exemption form banks, §23-48-106.
Fraternal benefit societies.
Articles of incorporation.
Applicants for incorporation, §23-74-301.
Garnishment.
Exemption for banks, §23-48-106.
Greyhound racing.
Franchise holders, §23-111-514.
Health maintenance organizations.
Directors, officers or partners, §23-76-111.
Horse racing.
Franchise holders, §23-110-414.
Racing commission.
Secretary, §23-110-202.
Insurance.
Commissioner, §23-61-102.
Managing general agents, §23-64-403.
Mutual assessment life and disability insurers, §23-72-105.
Reciprocal insurers.
Attorneys at law, §23-70-110.
Action on bond, §23-70-110.
Deposit in lieu of bond, §23-70-110.

BONDS, SURETY —Cont'd
Insurance —Cont'd
Risk management.
Emergency conditions, §23-61-606.
Procurement of insurance or surety bonding, §23-61-606.
Surety insurers, §§23-63-1001 to 23-63-1004.
Lotteries.
Employees of commission, §23-115-303.
Retailers, §23-115-603.
Vendors, §23-115-502.
Money services.
License applicants, §23-55-204.
Mortgage bankers, brokers and servicers, §23-39-505.
Motor carriers.
Bonds, surety of carrier employees, §§23-16-201 to 23-16-207.
Forfeited bonds.
Disposition, §23-13-264.
Interstate commerce.
Requirement, §23-13-228.
Protection of public, §23-13-227.
Motor vehicle dealers.
Application for license accompanied by, §23-112-103.
Professional employer organizations, §23-92-408.
Employer service assurance organizations, §23-92-415.
Public service commission, §23-2-101.
Railroad police, §23-12-702.
Railroads.
Bonds, surety of carrier employees, §§23-16-201 to 23-16-207.
Recreational vehicle franchises.
License requirement, §23-112-1005.
Savings and loan associations.
Brokers.
Licenses, §23-37-603.
Directors, officers and employees, §23-37-314.
Securities regulation.
Agents.
Registration, §23-42-305.
Broker-dealers.
Registration, §23-42-305.
Investment advisors.
Registration, §23-42-305.
Surety insurers.
Estoppel.
Denying corporate power to be surety, §23-63-1004.
Expenses.
Allowance of bond expense, §23-63-1001.

BONDS, SURETY —Cont'd
Surety insurers —Cont'd
Individual rights.
Insurer's rights same as individual, §23-63-1003.
Sole surety on court, judicial and other bonds, §23-63-1001.
Sole surety on official bonds, §23-63-1002.
Trust companies.
Directors, officers and employees, §23-51-148.
Subsidiary trust companies.
Bond to secure performance, §23-47-806.

BOUNDARIES.
Savings and loan associations.
Foreign associations.
Operation in city on state line, §23-37-601.

BREAST CANCER.
Mammography.
Coverage for mammogram screening of occult breast cancer, §23-79-140.
Definitions, §23-79-140.
Digital mammogram coding and reimbursement to be used, §23-79-140.
Insurance.
Coverage, §23-79-140.
Required coverage, §23-99-405.
Definitions, §23-79-112.
Insurance coverage, §23-79-140.
Mastectomies.
Required coverage, §23-99-405.

BRIBERY.
Banks.
Acceptance of bribes, §23-50-108.

BROADBAND SERVICES.
Electric utilities.
Broadband over power lines enabling act, §§23-18-801 to 23-18-808.
Compliance with federal law, §23-18-808.
Definitions, §23-18-802.
Fees and charges, §23-18-806.
Jurisdiction, §23-18-805.
Operation of systems, §23-18-804.
Ownership of systems, §23-18-804.
Permissible broadband systems, §23-18-803.
Reliability of electric systems maintained, §23-18-807.
Title of act, §23-18-801.

BUILDING AND LOAN ASSOCIATIONS.
Capital development companies.
Investment in and loans to, §23-32-202.
Certificates of deposit.
Agency designations, §§23-32-501 to 23-32-509.
Insolvency and illegal practices.
Receivers.
Federal savings and loan insurance corporation acting as receiver, §23-37-706.
Loans.
Servicemen's Readjustment Act, §23-32-205.
Names.
Restrictions on use, §23-32-209.
Receivers.
Insolvency and illegal practices.
Federal savings and loan insurance corporation acting as receiver, §23-37-706.
Savings and loan associations.
General provisions, §§23-37-101 to 23-37-706.
Servicemen's Readjustment Act.
Loans, §23-32-205.

BUILDINGS AND CONSTRUCTION.
Bank premises.
Acquisition, §23-47-103.
Rural telecommunications cooperatives.
Instruction standards of telecommunications lines and facilities, §23-17-236.

BUNGEE JUMPING.
Insurance for amusements, §§23-89-501 to 23-89-518.

BURDEN OF PROOF.
Health maintenance organizations.
Revocation or suspension of certificate of authority, appeal of action of commissioner, §23-76-126.
Highways.
State highway and transportation department.
Persons seeking to avoid compliance with act or orders, §23-2-417.
Lottery commission.
Removal of members, proceedings on, §23-115-210.
Public service commission.
Person seeking to avoid compliance with act or orders, §23-2-417.
Railroads.
Livestock.
Killing or injuring, §23-12-910.

BURIAL.
Associations.
Insurance, §§23-78-101 to 23-78-125.
Insurance.
Associations, §§23-78-101 to 23-78-125.

BURIAL INSURANCE ASSOCIATIONS.
Agent's license.
Fee, §23-78-113.
Renewal, §23-78-113.
Applicability of provisions.
Existing associations subject to chapter, §23-78-102.
Assessments, §23-78-116.
Authority of act, §23-78-103.
Board.
Appointment of members, §23-78-105.
Burial associations under control of board, §23-78-109.
Chairman, §23-78-106.
Composition, §23-78-105.
Consumer representative, §23-78-106.
Creation, §23-78-105.
Duties, §23-78-108.
Employees, §23-78-107.
Executive secretary, §23-78-107.
Expenses of members, §23-78-105.
Legal counsel, §23-78-107.
Meetings, §23-78-106.
Oath of office, §23-78-105.
Powers, §23-78-108.
Burial associations under control of board, §23-78-109.
Qualifications of members, §23-78-105.
Quorum, §23-78-106.
Removal of members, §23-78-105.
Terms of members, §23-78-105.
Vacancies, §23-78-105.
Books and records.
Failure to maintain, §23-78-119.
Inspection and audit, §23-78-117.
Bylaws, §23-78-115.
Certificates for benefits.
Issuance, §23-78-112.
Certificates of authority.
Application, §23-78-110.
Issuance, §23-78-110.
Revocation, §23-78-124.
Appeals, §23-78-125.
Hearings, §23-78-124.
Chapter exclusive authority, §23-78-103.
Definitions, §23-78-101.
Disposition of collections, §23-78-122.
Disposition of fees and charges, §23-78-123.
Existing associations subject to chapter, §23-78-102.

BURIAL INSURANCE ASSOCIATIONS —Cont'd
False claims, promises or representations of agent, §23-78-114.
False entries, §23-78-118.
Fees, §23-78-111.
Disposition, §23-78-123.
Hearings.
Decisions, §23-78-108.
Power to conduct, §23-78-108.
Revocation of certificates of authority, §23-78-124.
Witnesses, §23-78-108.
Insurance code.
Inapplicability of provisions, §23-60-104.
Investments.
Collections, §23-78-122.
Membership dues, §23-78-116.
Oaths.
Board.
Oath of office, §23-78-105.
Fees.
Oath at payment, §23-78-111.
Penalties.
Violations, §23-78-104.
Records.
Failure to maintain, §23-78-119.
Inspection and audit, §23-78-117.
Reports.
Semiannual reports, §23-78-120.
Rules and regulations, §§23-78-115, 23-78-121.
Violations.
Penalties, §23-78-104.

C

CABLE TELEVISION.
Video service act, §§23-19-201 to 23-19-210.

CAMERAS AND CAMCORDERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CAMPAIGN FINANCE.
Lottery vendors.
Political contributions prohibited, §23-115-504.

CANCER.
Colorectal cancer.
Health insurance coverage for prevention and treatment, §§23-79-1201 to 23-79-1209.
Prescription medication.
Insurance coverage, §23-79-147.

CANCER —Cont'd
Prostate cancer.
Health insurance coverage for prevention and treatment, §§23-79-1301 to 23-79-1303.

CAPITAL DEVELOPMENT COMPANIES.
Bank subsidiaries, §23-47-604.
Investments.
Financial institutions, §23-32-202.
Loans.
Financial institution investments, §23-32-202.

CAPTIVE INSURANCE COMPANIES, §§23-63-1601 to 23-63-1623.
Applicability of insurance code, §§23-63-1616, 23-63-1617.
Associations.
Participation prohibited, §23-63-1613.
Capital requirements, §23-63-1604.
Certificate of authority, §23-63-1623.
Conversions, §23-63-1619.
Definitions, §23-63-1601.
Examinations, §23-63-1608.
Exemption from insurance code, §§23-63-1616, 23-63-1617.
Guaranty or insolvency funds.
Participation prohibited, §23-63-1613.
Incorporation, §23-63-1606.
Investments, §23-63-1610.
Licenses.
Applications, §23-63-1602.
Capital requirements, §23-63-1604.
Surplus requirements, §23-63-1605.
Suspension or revocation, §23-63-1609.
Mergers, §23-63-1619.
Names.
Deceptively similar names, §23-63-1603.
Organization, §23-63-1606.
Pools.
Participation prohibited, §23-63-1613.
Premium tax, §23-63-1614.
Protected cell.
Availability of funds, §23-63-1618.
Defined, §23-63-1601.
Producer reinsurance protected cell requirements, §23-63-1622.
Rating organizations.
Not required to join, §23-63-1612.
Reinsurance, §23-63-1611.
Reports, §23-63-1607.
Rules and regulations, §23-63-1615.
Sponsored captive insurance companies.
Defined, §23-63-1601.

CAPTIVE INSURANCE COMPANIES —Cont'd
Sponsored captive insurance companies —Cont'd
Participants, §23-63-1621.
Requirements as to sponsors, §23-63-1620.
Surplus requirements, §23-63-1605.

CARRIERS.
Appeals.
Motor carriers.
Complaints against carriers.
Orders of state highway and transportation department, §23-13-308.
State highway and transportation department.
Orders of department, §23-2-425.
Bonds, surety.
Employees.
Bonds in violation of subchapter.
Void, §23-16-202.
Cancellation of bonds, §23-16-207.
Rejection of bond or undertaking, §23-16-206.
Residence.
Qualifications of sureties, §23-16-203.
Selection of sureties.
Employer not to select sureties, §23-16-204.
Term of bond or undertaking, §23-16-205.
Violations of provisions.
Penalties, §23-16-201.
Who may become sureties, §23-16-203.
Charges for use of another mode of transportation in addition to motor transportation.
Agreement with carrier to pay.
Penalty for violations, §23-10-109.
Void, §23-10-109.
Definitions, §23-16-101.
Insurance.
Uninsured motorist liability insurance, §23-16-301.
Fees.
Annual fees collected from carriers, §23-16-104.
Cost of operation.
Record, §23-16-106.
Cumulative effect of act, §23-16-102.
Definitions, §23-16-101.
Delinquency.
Penalty, §23-16-105.
Gross revenue.
Annual certified statement, §23-16-103.

CARRIERS —Cont'd
Fees —Cont'd
Penalties.
Delinquency, §23-16-105.
Receipt of fees, §23-16-105.
Statement of fees due from carriers, §23-16-105.
Subchapter cumulative, §23-16-102.
Insurance.
Uninsured motorist liability insurance.
Amount, §23-16-302.
Definitions, §23-16-301.
Insolvency protection.
Applicability, §23-16-303.
Required, §23-16-302.
Subrogation, §23-16-304.
Interstate commerce.
Rates, charges and classifications.
Authority of commission, §23-4-102.
Investigations.
Rates and charges.
Change in rates.
Investigation by commission, §23-4-622.
Mandamus.
Rates and charges.
Change in rates.
Petition, §23-4-633.
Motor carriers, §§23-13-102 to 23-13-605.
Notice.
Rates and charges.
Change in rates, §23-4-620.
Proposed changes, §23-4-635.
Penalties.
Agreements with carrier to pay charge for use of another mode of transportation in addition to motor transportation, §23-10-109.
Bonds, surety.
Employees.
Violations of provisions, §23-16-201.
Fees.
Delinquency, §23-16-105.
Pipelines.
Pipeline companies deemed common carriers, §23-15-101.
Rates and charges.
Change in rates.
Apportionment of increase, §23-4-626.
Authority of commission to fix rates, §23-4-626.
Collection of rates, §23-4-628.
Surcharge to collect rates increased by courts, §23-4-629.

CARRIERS —Cont'd
Rates and charges —Cont'd
Change in rates —Cont'd
Conditional implementation of suspended rate, §23-4-627.
Effective date, §23-4-625.
Failure of commission to reach timely decision, §23-4-627.
Mandamus, §23-4-633.
Interim implementation of suspended rates, §23-4-624.
Mandamus.
Petition, §23-4-633.
Notice, §23-4-620.
Proposed changes, §23-4-635.
Orders.
Issuance, §23-4-628.
Rate increase not effective until final order, §23-4-625.
Refunds of excessive bonded collections, §23-4-630.
Disposition of proceeds, §23-4-634.
Order not stayed during rehearing, §23-4-631.
Suit to compel refunds, §23-4-634.
Surcharge to collect excessive refunds, §23-4-632.
Schedules.
Rate changes to be reflected in schedules, §23-4-621.
Surcharge.
Collection of excessive refunds, §23-4-632.
Collection of rates increased on rehearing or by courts, §23-4-629.
Suspension of proposed rates, §23-4-623.
Interim implementation of suspended rates, §23-4-624.
Discrimination.
Interterritorial freight rates, §23-4-637.
Establishment.
Authority of commission, §23-4-101.
Interstate rates and charges.
Authority of commission, §23-4-102.
Interterritorial freight rates.
Discriminatory rate, §23-4-637.
Minimum charges, §23-4-109.
Reasonable rates, §23-4-104.
Required, §23-4-103.
Schedules.
Change in rates.
Rate changes to be reflected in schedules, §23-4-621.
Deviation.
Greater or lesser rate not to be charged, §23-4-107.

CARRIERS —Cont'd
Rates and charges —Cont'd
Schedules —Cont'd
Filing, §23-4-105.
Public inspection, §23-4-106.
Sliding scales of rates, §23-4-108.
Subchapter cumulative, §23-16-102.
Subrogation.
Insurance.
Uninsured motorist liability insurance, §23-16-304.

CBCT'S, §§23-48-801 to 23-48-810.

CD PLAYERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CEASE AND DESIST ORDERS.
Amusement ride and amusement attraction safety insurance, §§23-89-504, 23-89-507, 23-89-509.
Continuing care providers.
Enforcement of chapter, §23-93-104.
Insurance.
Commissioner of insurance, §23-61-103.
Unauthorized insurers, §23-65-101.
Unfair competition and trade practices, §§23-66-210 to 23-66-212.
Life settlements.
Fraudulent life settlement acts, §23-81-815.
Money services.
Administrative hearings, §§23-55-901, 23-55-902.
Licensees, §23-55-803.
Unlicensed persons, §23-55-807.
Mortgage bankers, brokers and servicers, §23-39-514.
Savings and loan associations.
Enforcement of chapter, §23-37-212.

CELL PHONES.
Mobile telecommunications place of primary use.
Database for vendors, §23-17-413.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CEMETERIES.
Burials.
Associations.
Insurance, §§23-78-101 to 23-78-125.

CERTIFICATES OF DEPOSIT.
Agency designation, §§23-32-501 to 23-32-509.
Conflict of laws, §23-32-509.
Definitions, §23-32-501.

CERTIFICATES OF DEPOSIT —Cont'd
Agency designation —Cont'd
Disability or incapacity.
Survival of authority, §23-32-504.
Discharge of financial institution, §23-32-507.
Forms, §23-32-503.
Payments to agent, §23-32-505.
Payments to minors, §23-32-506.
Scope, §23-32-502.
Setoffs, §23-32-508.
Survival of authority, §23-32-504.
Termination, §23-32-504.
Terms of designation, §23-32-504.

CHARITABLE BINGO AND RAFFLES ENABLING ACT, §§23-114-101 to 23-114-706.
Administration, §§23-114-201 to 23-114-203.
Approval and printing of bingo faces and raffle tickets, §23-114-202.
Director to administer chapter, §23-114-201.
Rulemaking authority, §23-114-203.
Authorized organizations.
Address of primary business office and address where records maintained.
Organizations to provide to director, §23-114-405.
Bingo and raffle accounts, §§23-114-501 to 23-114-507.
Compensation of employees, §23-114-103.
Operation of games of bingo and raffles.
Prohibition on compensation, §23-114-403.
Fines.
Violation of provisions, §23-114-104.
Licenses, §§23-114-301 to 23-114-307.
Revocation, §23-114-701.
Bingo and raffle accounts, §§23-114-501 to 23-114-507.
Authorized users, §23-114-503.
Deposits, §23-114-501.
Disbursements to charitable purpose, §§23-114-503, 23-114-504.
Establishment and maintenance, §23-114-501.
Expenses.
Allowable expenses, §23-114-506.
Payment from bingo and raffle account, §23-114-507.
Gross receipts not to be commingled with other funds, §23-114-501.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Bingo and raffle accounts —Cont'd
Net proceeds.
Prohibited uses, §23-114-505.
Use for charitable purpose, §23-114-504.
Withdrawals, §23-114-502.
Bingo faces.
Approval, §23-114-202.
Excise taxes, §§23-114-601 to 23-114-606.
Printing, §23-114-202.
Candidates for public office.
Net proceeds not to be used to support or oppose, §23-114-505.
Citation of act, §23-114-101.
Compensation.
Authorized organizations.
Compensation of employees, §23-114-103.
Operation of games of bingo and raffles.
Prohibition on compensation, §23-114-403.
Complaint of violation, §23-114-706.
Conduct of raffles, §23-114-401.
Definitions, §23-114-102.
Director of department of finance and administration.
Address of authorized organization's primary business office and address where records maintained.
Organizations to provide to director, §23-114-405.
Administration of provisions, §23-114-201.
Approval of bingo faces and raffle tickets, §23-114-202.
Rulemaking authority, §23-114-203.
Supervision of games of bingo and raffles, §23-114-201.
Discrimination prohibited, §23-114-404.
Distributors and manufacturers.
Excise taxes, §§23-114-601 to 23-114-606.
Licenses.
Applications, §23-114-304.
Fees, §23-114-307.
Deposit of revenue collected, §23-114-605.
Revocation of licenses, §23-114-702.
Purchase of bingo equipment from, §23-114-409.
Door prizes, §23-114-408.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Electronic devices or machines.
Games of bingo or raffles prohibited on, §23-114-103.
Enforcement, §§23-114-701 to 23-114-706.
Complaints, §23-114-706.
Injunctions, §23-114-704.
Inspection of premises, §23-114-703.
Records.
Examination and inspection, §23-114-705.
Revocation of licenses.
Authorized organizations, §23-114-701.
Distributors and manufacturers, §23-114-702.
Excise taxes, §§23-114-601 to 23-114-606.
Assessments on nonfilers, §23-114-606.
Deposit of revenue collected, §23-114-605.
Levy, §23-114-601.
Payment, §23-114-602.
Records.
Excise tax reporting, §23-114-603.
Reporting, §23-114-602.
Information to be reported, §23-114-603.
Expenses.
Allowable expenses, §23-114-506.
Payment from bingo and raffle account, §23-114-507.
Fees.
Deposit of revenue collected, §23-114-605.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-307.
Fines.
Violation of provisions, §23-114-104.
Gift certificates, §23-114-406.
Injunctions, §23-114-704.
Legislation, influencing or attempting to influence.
Net proceeds not to be used for, §23-114-505.
Licenses, §§23-114-301 to 23-114-307.
Applications.
Authorized organizations, §23-114-303.
Distributors and manufacturers, §23-114-304.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Licenses —Cont'd
Authorized organizations, §23-114-301.
Applications, §23-114-303.
Display of licenses, §23-114-306.
Fees, §23-114-302.
Deposit of revenue collected, §23-114-605.
Revocation, §23-114-701.
Denial, suspension, or revocation, §23-114-305.
Display of licenses, §23-114-306.
Distributors and manufacturers.
Applications, §23-114-304.
Fees, §23-114-307.
Deposit of revenue collected, §23-114-605.
Revocation of licenses, §23-114-702.
Renewal, §23-114-303.
Revocation.
Authorized organizations, §23-114-701.
Distributors and manufacturers, §23-114-702.
Temporary licenses, §23-114-302.
Lotteries.
Games not prohibited as, §23-114-103.
Measures submitted to vote of the people.
Net proceeds not to be used to support or oppose, §23-114-505.
Minors.
Prohibited from playing game of bingo or purchasing raffle tickets, §23-114-404.
Operation of games of bingo and raffles, §§23-114-401 to 23-114-409.
Bingo sessions, §23-114-407.
Prizes, §23-114-408.
Compensation prohibited, §23-114-403.
Conduct of raffles, §23-114-401.
Discrimination prohibited, §23-114-404.
Gift certificates, §23-114-406.
Premises, §23-114-401.
Inspection of premises, §23-114-703.
Leasing or making available premises, §23-114-402.
Prizes, §23-114-408.
Purchase of bingo equipment, §23-114-409.
Records, §23-114-405.
Premises.
Conduct of bingo games, §23-114-401.
Inspection, §23-114-703.

CHARITABLE BINGO AND RAFFLES ENABLING ACT —Cont'd
Premises —Cont'd
Leasing or making available premises, §23-114-402.
Prizes, §23-114-408.
Purchase of bingo equipment, §23-114-409.
Raffle tickets.
Approval, §23-114-202.
Minors prohibited from purchasing, §23-114-404.
Printing, §23-114-202.
Records, §23-114-405.
Examination and inspection, §23-114-705.
Excise taxes.
Maintenance of records to substantiate report, §23-114-603.
Gift certificates, §23-114-406.
Rulemaking authority, §23-114-203.
Taxation.
Excise taxes, §§23-114-601 to 23-114-606.
Temporary licenses, §23-114-302.
Title of act, §23-114-101.
Venue.
Injunctions, §23-114-704.
Violation of provisions.
Complaints, §23-114-706.
Fines, §23-114-104.
Injunctions, §23-114-704.
Revocation of licenses.
Authorized organizations, §23-114-701.
Distributors and manufacturers, §23-114-702.

CHARITABLE ORGANIZATIONS.
Bingo and raffles.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.
Hospital and medical service corporations.
Donations.
Power to make donations for the public welfare, §23-75-121.
Raffles and bingo.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

CHECK-CASHING BUSINESSES.
Uniform money services act, §§23-55-101 to 23-55-1006.

CHILDREN AND MINORS.
Banks.
Certificates of deposit.
Payments to minors, §23-47-306.

CHILDREN AND MINORS —Cont'd
Banks —Cont'd
Deposits by minors, §23-47-202.
Loans to minors, §23-47-509.
Safe deposit boxes.
Leases to minors, §23-47-903.
Bingo.
Charitable bingo and raffles.
Children prohibited from playing bingo or buying raffle tickets, §23-114-404.
Charitable bingo and raffles.
Children prohibited from playing bingo or buying raffle tickets, §23-114-404.
Credit unions.
Shares in name of minor, §23-35-502.
Fraternal benefit societies.
Benefit contracts.
Issuance prior to attaining age of majority.
Bound by terms, §23-74-404.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Lodge system.
Organizing and operating lodges for children, §23-74-102.
Greyhound racing.
Employment by franchise holders.
Prohibited, §23-111-308.
Patrons at race tracks.
Prohibited, §23-111-308.
Wagering.
Prohibited, §23-111-508.
Health insurance.
Children's Preventive Health Care Act, §23-79-141.
Health maintenance organizations.
Children's Preventive Health Care Act, §23-79-141.
Horse racing.
Wagering.
Prohibited for persons under 18, §23-110-405.
Hospital and medical service corporations.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Insurance.
Children's Preventive Health Care Act, §23-79-141.
Benefits, §23-79-141.
Coverage, §23-79-141.
Definitions, §23-79-141.
Periodic physical examination.
Coverage for, §23-79-141.
Defined, §23-79-141.

CHILDREN AND MINORS —Cont'd
Insurance —Cont'd
Children's Preventive Health Care Act —Cont'd
Policies, contracts, certificates or plans.
Required provisions, §23-79-141.
Coverage of newborn infants included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
Group and blanket health insurance.
Coverage.
Denial or restriction of coverage.
Certain policy provisions void, §23-79-144.
Health care coverage.
Denial or restriction of coverage.
Certain policy provisions void, §23-79-144.
Policies.
Coverage of newborn infants included in all policies covering insured's family.
Minimum basic benefit policies, §23-98-106.
Lotteries.
Penalties for violations, §23-115-901.
Prohibition on purchase of tickets by minors, §23-115-402.
Retailers allowing minors to purchase tickets, §23-115-207.
Raffles.
Charitable bingo and raffles.
Children prohibited from playing bingo or buying raffle tickets, §23-114-404.
Safe deposit boxes.
Leases to minors, §23-47-903.
Savings and loan associations.
Savings accounts of minors, §23-37-501.
Water power companies.
Eminent domain.
Proceedings against infants.
Guardian ad litem appointed, §23-18-406.

CHIROPRACTORS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

CHOICE OF HEALTH CARE PROVIDERS BY PATIENTS, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Actions.
Enforcement of provisions by providers, §23-99-207.
Applicability of provisions, §23-99-209.
Enforcement of any willing provider laws.
Applicability of any willing provider laws, §23-99-801.
Attorneys' fees.
Enforcement of provisions by providers, §23-99-207.
Definitions, §23-99-203.
Enforcement of any willing provider laws, §23-99-802.
Discriminatory terms in health benefit plans, §23-99-204.
Effective date, §23-99-208.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.
Applicability of any willing provider laws, §23-99-801.
Definitions, §23-99-802.
Injunctions, §23-99-803.
Insurance commissioner, §23-99-803.
Statutory construction, §23-99-801.
ERISA.
Effect on applicability of provisions, §23-99-209.
Enforcement of any willing provider laws.
Applicability of any willing provider laws, §23-99-801.
Health benefit plans.
Conformity with provisions, §23-99-206.
Void provisions, §23-99-208.
Health care benefits.
Excluding provider from providing, §23-99-205.
Requiring insurer to provide, §23-99-205.
Injunctions.
Enforcement of any willing provider laws, §23-99-803.
Enforcement of provisions by providers, §23-99-207.
Legislative intent, §23-99-202.
Monetary advantages or penalties.
Discriminatory terms in health benefit plans, §23-99-204.
Patient protection act.
Short title, §23-99-201.

CHOICE OF HEALTH CARE PROVIDERS BY PATIENTS —Cont'd
Purpose of provisions, §23-99-202.
Statutory construction, §23-99-205.
Enforcement of any willing provider laws, §23-99-801.
Void provisions, §23-99-208.

CHOSES IN ACTION.
Industrial loan institutions.
Reserves required, §23-36-113.

CIRCUIT COURTS.
Lotteries.
Closure of retail business by commission.
Judicial relief, §23-115-609.
Removal of commission members, proceedings on, §23-115-210.

CITIZEN'S BAND RADIOS.
Restrictions on use of equipment, §23-1-115.

CLAIMS.
Health maintenance organizations.
Complaint system, §23-76-116.
Savings and loan associations.
Conflicting claims as to account.
Withholding withdrawals, §23-37-506.

CLAIMS AGAINST THE STATE.
Lottery commission, claims against, §23-115-208.

CLEAN ENERGY DEVELOPMENT, §§23-18-701 to 23-18-703.
Authority of public service commission, §23-18-703.
Consideration of clean energy by electric and natural gas utilities.
Requirement, §23-18-702.
Legislative findings, §23-18-701.
Purpose, §23-18-701.

CLERGY.
Railroads.
Free carriage.
Authorized, §23-4-807.

CLUBS.
Automobile clubs or associations, §§23-77-101 to 23-77-109.
Credit unions.
Christmas and other thrift clubs, §23-35-602.
Motor vehicles.
Automobile clubs or associations, §§23-77-101 to 23-77-109.

COAL.
Coal cars.
Railroads.
Switching charges, §23-4-612.
Electricity.
Arkansas-mined coal.
Use by electric utilities, §23-18-105.
Public utilities.
Electricity.
Arkansas-mined coal.
Use by electric utilities, §23-18-105.
Railroads.
Coal cars.
Switching charges, §23-4-612.

COERCION.
Recreational vehicles franchises.
Coercion of dealer.
Prohibited acts, §23-112-1018.

COLLATERAL.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

COLLECTIVE BARGAINING.
Public utilities.
Rates and charges.
Establishment of rates by public service commission.
No changes allowed in terms of employment subject to collective bargaining agreements, §23-4-421.

COLLEGES AND UNIVERSITIES.
Health maintenance organizations.
Primary care physician required.
Options for students at postsecondary institutions, §23-76-132.

COLORECTAL CANCER.
Health insurance coverage for prevention and treatment, §§23-79-1201 to 23-79-1209.
Activities not prohibited, §23-79-1203.
Additional benefit costs, §23-79-1206.
Annual deductible and coinsurance, benefits subject to, §23-79-1204.
Cost-sharing, §23-79-1207.
Coverage required, §23-79-1202.
Definitions, §23-79-1201.
Exclusions and reductions permissible, §23-79-1204.
Nonparticipating providers, payment of, §23-79-1209.
Participating providers, §23-79-1205.

COLORECTAL CANCER —Cont'd
Health insurance coverage for prevention and treatment —Cont'd
Referrals to participating providers, §23-79-1208.

COMMERCE.
Air commerce, §§23-14-101 to 23-14-128.

COMMODITIES.
Futures.
Dealing in futures generally, §§23-44-101 to 23-44-109.

COMMON CARRIERS.
Employees.
Bonds, surety of carrier employees, §§23-16-201 to 23-16-207.
Fees.
Annual fees collected from carriers, §§23-16-101 to 23-16-106.
Insurance.
Uninsured motorist liability coverage, §§23-16-301 to 23-16-304.
Motor carriers, §§23-13-102 to 23-13-605.

COMMUNITY COLLEGES.
Greyhound racing revenue.
Use of revenue derived from additional racing days, §23-111-515.

COMMUNITY DEVELOPMENT CORPORATIONS.
Bank subsidiaries, §23-47-605.

COMMUNITY MENTAL HEALTH CLINICS AND CENTERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

COMPACTS.
Insurance.
Interstate insurance product regulation compact, §§23-67-601, 23-67-602.
Surplus lines insurance.
Multistate agreements or contracts, §§23-65-401 to 23-65-403.

COMPENSATING TAX.
Banks.
Applicability, §23-48-101.

COMPENSATING TAX —Cont'd
Savings and loan associations.
Applicability of provisions, §23-37-108.

COMPLAINTS.
Highways.
Repeal of provisions, effect, §23-2-430.

COMPREHENSIVE HEALTH INSURANCE POOL, §§23-79-501 to 23-79-517.
Actions against pool or board of directors.
Statute of limitations, §23-79-516.
Benefits.
Outline of benefits, §23-79-510.
Board of directors, §23-79-504.
Plan of operation, §23-79-505.
Cessation of operations, §23-79-515.
Citation of act.
Short title, §23-79-502.
Collective action.
Immunity from liability, §23-79-512.
Confidentiality of information, §23-79-511.
Coverage under plan.
Benefits, §23-79-510.
Eligibility, §23-79-509.
Policy renewal, §23-79-510.
Creation, §23-79-504.
Definitions, §23-79-503.
Eligibility, §23-79-509.
Employers, prohibited practices, §23-79-513.
Immunity.
Board not liable for obligations of pool, §23-79-504.
Collective actions, §23-79-512.
Ineligibility for pool coverage, §23-79-513.
Insurers.
Defined, §23-79-503.
Participation in pool, §23-79-504.
Plan.
Coverage under.
Policy renewal, §23-79-510.
Defined, §23-79-503.
Plan administrator, §23-79-508.
Plan of operation, §23-79-505.
Powers, §23-79-506.
Preexisting condition exclusions.
Resident eligible due to coverage in pool in another state, §23-79-517.
Purpose, §23-79-501.
Reciprocal agreements, power to enter into, §23-79-506.
Resident eligibility due to coverage in pool in another state, §23-79-517.

COMPREHENSIVE HEALTH INSURANCE POOL —Cont'd
Sources of funding, §23-79-507.
Termination of operations, §23-79-515.
Title of act.
Short title, §23-79-502.
Unfair competition and trade practices.
Unfair referrals to plan, §23-79-513.

COMPUTERS AND SOFTWARE.
Electric utilities.
Broadband over power lines enabling act, §§23-18-801 to 23-18-808.
Portable electronics insurance, §§23-88-501 to 23-88-507.

CONFIDENTIALITY OF INFORMATION.
Automatic teller machines.
Account information, §23-48-808.
Bank department.
Travel expenses of staff, §23-46-206.
Banks.
Automatic teller machines, §23-48-808.
Bank department and banking board records, §23-46-101.
Comprehensive health insurance pool, §23-79-511.
Electric utility bills, usage and payment records, §23-2-304.
Greyhound racing.
Criminal background checks.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Health insurance.
Portability and accountability.
Disclosure of information by health plan issuers, §23-86-313.
Health maintenance organizations.
Filings and reports as public documents, §23-76-128.
Medical information, §23-76-129.
Horse racing.
Criminal background checks.
Horse owners, trainers, jockeys, etc., §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Insurance.
Commissioner.
Books and records, §23-61-107.

CONFIDENTIALITY OF INFORMATION —Cont'd
Insurance —Cont'd
Commissioner —Cont'd
Examination of insurers.
Ancillary information, §23-61-207.
Disclosure of nonpublic personal information, §23-61-113.
Domestic stock and mutual insurers.
Provisions for the prevention of unfair use of information by owners, directors and officers, §23-69-205.
Fraudulent insurance acts.
Mandatory reporting, §23-66-507.
Group and blanket health insurance.
Mental health coverage, §23-86-113.
Holding companies, §23-63-517.
Mutual insurance holding companies, §23-69-320.
Records, §23-63-517.
Life settlements.
Confidentiality of insured's identifying information, §23-81-806.
Examination of licensees or applicants, §23-81-807.
Investigation of fraudulent life settlement acts, §23-81-814.
Lotteries, §23-115-404.
Agreements with United States government and enforcement or regulatory agencies, §23-115-405.
Withholding from prizes.
Debtors owing money to state.
Confidential information provided to claimant agency, §23-115-1005.
Money services.
Information filed with commissioner, §23-55-607.
Motor vehicles.
Event data recorders, §23-112-107.
Professional employer organizations, §23-92-413.
Property insurance.
Actuarial opinion law.
Access to information, §23-63-1905.
Fire loss reporting act, §23-88-403.
Public service commission.
Electric utility bills, usage and payment records, §23-2-304.
Risk-based capital act.
RBC reports and plans, §23-63-1309.
Health organizations, §23-63-1508.
Savings and loan associations.
Divulging of information by employees, §23-37-202.

CONFIDENTIALITY OF INFORMATION —Cont'd
Securities regulation.
Commissioner, §23-42-203.
Trust companies.
Records, §23-51-187.

CONFLICT OF LAWS.
Electric utility storm recovery securitization financing, §23-18-908.
Financial institutions.
Agency designation on certificates of deposit, §23-32-509.
Greyhound racing.
Wagering on electronic games of skill, §23-113-602.
Horse racing.
Statutes prohibiting betting on racing inapplicable, §23-110-102.
Wagering on electronic games of skill, §23-113-602.
Insurance.
Assets.
Conflicts in treatment of, §23-63-610.
Life settlements, §23-81-812.
Lotteries.
Enforcement provisions, §23-115-904.
Trust companies.
Choice of law, §§23-51-198, 23-51-199.

CONFLICTS OF INTEREST.
Aviation.
Air commerce.
Transportation commission, §23-14-108.
Bank department.
Staff, §23-46-207.
Electric cooperative corporations.
Board of directors, §23-18-321.
Greyhound racing.
Racing commission.
Persons prohibited from membership, §23-111-202.
Health insurance.
Small employer health insurance purchasing groups, §23-86-508.
Horse racing.
Racing commission.
Persons prohibited from membership, §23-110-201.
Insurance.
Commissioner, §23-61-106.
Property and casualty insurance guaranty.
Advisory association.
Members may enter into contracts, §23-90-110.

CONFLICTS OF INTEREST —Cont'd
Life settlements.
Examination of licensees or applicants, §23-81-807.
Lottery commission, §23-115-203.
Employees of commission, §23-115-303.
Gifts from or other interests in retailers, §23-115-601.
Gifts from or other interests in vendors, §23-115-501.
Railroads.
Officers interested in furnishing supplies.
Contracts void, §23-10-108.
Rural telecommunications cooperatives.
Board of directors, §23-17-239.
Trust companies.
Criminal violations, §23-51-145.
Interests in trust institutions, §23-51-196.
Trustees.
Disclosure, §23-51-195.

CONSENT.
Life settlements.
Prerequisites to contract, §23-81-811.

CONSERVATORS.
Securities regulations.
Commissioner, enforcement of act by injunction and ancillary remedies, §23-42-209.

CONSUMER CHOICE IN HEALTH INSURANCE, §§23-79-801 to 23-79-805.

CONSUMER CREDIT.
Insurance, use of credit information, §§23-67-401 to 23-67-415.
Adverse agency notification, §23-67-408.
Citation of act, §23-67-401.
Claims history report, §23-67-411.
Construction of act.
Applicability of the fair credit reporting act, §23-67-412.
Public policy, §23-67-402.
Scope, §23-67-403.
Credit reporting agencies.
Sale of policy term information, §23-67-411.
Credit scoring, §23-67-405.
Definitions, §23-67-404.
Dispute resolution and error correction, §23-67-406.
Fair credit reporting act.
Applicability, §23-67-412.

CONSUMER CREDIT —Cont'd
Insurance, use of credit information —Cont'd
Filing requirements.
Scoring models or other scoring process, §23-67-409.
Indemnification of agents, §23-67-410.
Individual underwriting, §23-67-413.
Initial notification, §23-67-407.
Motor vehicle report, §23-67-411.
Prohibited use of credit information, §23-67-405.
Proprietary consumer report scoring system and model, §23-67-409.
Public policy, §23-67-402.
Reporting requirements, §23-67-415.
Restriction of credit score information, §23-67-405.
Risk on individual basis, §23-67-413.
Rulemaking authority, §23-67-414.
Scope of act, §23-67-403.
Scoring models or other scoring process.
Filing requirements, §23-67-409.
Third party scoring models.
Filing requirements, §23-67-409.
Title of act, §23-67-401.
Use of credit information, §23-67-405.

CONSUMER PROTECTION.
Health insurance, §§23-99-401 to 23-99-420.
Consumer choice in health insurance, §§23-79-801 to 23-79-805.
Insurance.
Consumer sales protection act, §§23-66-601 to 23-66-610.
Health insurance, §§23-99-401 to 23-99-420.
Use of credit information in personal insurance, §§23-67-401 to 23-67-415.
Portable electronics insurance, §§23-88-501 to 23-88-507.
Use of credit information in personal insurance act, §§23-67-401 to 23-67-415.

CONTEMPT.
Highways.
State highway and transportation department.
Witnesses.
Refusal to attend or testify, §23-2-410.
Mortgage bankers, brokers and servicers.
Disciplinary proceedings, §23-39-514.

CONTEMPT —Cont'd
Railroads.
Discrimination.
Mandamus to enforce act.
Failure to comply, §23-4-719.

CONTINUING CARE PROVIDERS.
Accounts and accounting.
Interest-bearing escrow account.
Provider required to establish, §23-93-112.
Actions.
Enforcement of chapter, §23-93-104.
Advertising.
Untrue, deceptive or misleading statements.
Prohibited, §23-93-110.
Applicability of chapter, §23-93-102.
Bankruptcy and insolvency.
Resident's statutory lien on real and personal property, §23-93-113.
Citation of chapter, §23-93-101.
Contracts.
Contents.
Minimum content requirements, §23-93-108.
Licenses, §23-93-203.
Refunds.
Rescission of contractual obligation, §23-93-109.
Requirements, §23-93-108.
Rescission, §23-93-109.
Written in clear and understandable language.
Required, §23-93-108.
Definitions, §23-93-103.
Licenses, §23-93-201.
Disclosure statements.
Annual disclosure statements.
Contents, §23-93-106.
Required, §23-93-106.
Deficiencies.
Notice, §23-93-107.
Initial disclosure statements, §23-93-106.
Contents, §23-93-106.
Required, §23-93-106.
Inspections, §23-93-107.
Notice.
Deficiencies, §23-93-107.
Review, §23-93-107.
Enforcement of chapter, §23-93-104.
Escrow.
Interest-bearing escrow account.
Requirements, §23-93-112.
Examinations.
Insolvent facilities.
Financial examinations conducted, §23-93-114.

CONTINUING CARE PROVIDERS —Cont'd
Financial statements.
Inaccurately stating true financial condition.
Prohibited, §23-93-110.
Injunctions.
Enforcement of chapter, §23-93-104.
Intention of general assembly, §23-93-102.
Investigations.
Grounds for investigation, §23-93-114.
Powers of commissioner, §23-93-114.
Licenses, §§23-93-201 to 23-93-207.
Agency action on application.
Time period, §23-93-206.
Applicability of act, §23-93-202.
Application.
Contents, §23-93-207.
Denial, §23-93-206.
Documents and information required, §23-93-207.
Fees, §23-93-206.
Time period for agency action, §23-93-206.
Criteria for issuance, §23-93-204.
Definitions, §23-93-201.
Disciplinary actions, §23-93-205.
Fees.
Application fee, §23-93-206.
Entrance fee.
Defined, §23-93-201.
Issuance, §23-93-204.
Management of facility.
Limitation on third-party provider contracts, §23-93-203.
Reconsideration of application, §23-93-206.
Scope of act, §23-93-202.
Transferability, §23-93-203.
Violations, §23-93-205.
Liens.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Liquid refund reserves, §23-93-111.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.
Mandamus.
Enforcement of chapter, §23-93-104.
Notice.
Disclosure statements.
Deficiencies, §23-93-107.
Licenses.
Disciplinary actions, §23-93-205.

CONTINUING CARE PROVIDERS —Cont'd
Orders.
Cease and desist orders.
Enforcement of chapter, §23-93-104.
Receivers.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Refunds.
Liquid refund reserves.
Establishing and maintaining.
Required, §23-93-111.
Information relating to amount and method used to maintain furnished upon request, §23-93-111.
Satisfaction of reserve requirement, §23-93-111.
Rescission of contractual obligation, §23-93-109.
Rescission of contract, §23-93-109.
Rules and regulations, §23-93-105.
Title of chapter, §23-93-101.

CONTINUING EDUCATION.
Insurance agents, §§23-64-301 to 23-64-307.
Insurance brokers, §§23-64-301 to 23-64-307.
Mortgage bankers, brokers and servicers, §23-39-507.

CONTRACEPTIVES.
Health insurance coverage, §23-79-1103.
Equity in prescription insurance and contraceptive coverage, §§23-79-1101 to 23-79-1104.

CONTRACTS.
Banks.
Dissolution and liquidation.
Rejection of executory contracts, §23-49-112.
Commodities.
Dealing in futures generally, §§23-44-101 to 23-44-109.
Continuing care providers.
Contents.
Minimum content requirements, §23-93-108.
Licenses, §23-93-203.
Refunds.
Rescission of contractual obligation, §23-93-109.
Requirements, §23-93-108.

CONTRACTS —Cont'd
Continuing care providers —Cont'd
Rescission, §23-93-109.
Written in clear and understandable language.
Required, §23-93-108.
Fraternal benefit societies.
Consolidation or merger, §23-74-305.
Funerals.
Prepaid funeral services.
Cancellation of contract, §23-40-122.
Designation of agent for depositing proceeds, §23-40-118.
Failure to deliver proceeds to agent, §23-40-118.
Life insurance policy or annuity on contract.
Procurement by seller, notice to purchaser, §23-40-112.
Requirement, §23-40-112.
Futures.
Dealing in futures generally, §§23-44-101 to 23-44-109.
Health maintenance organizations.
Authority to contract, §23-76-130.
Hold harmless clauses.
Protection against insolvency, §23-76-118.
Highways.
State highway and transportation department.
Orders.
Contracts in violation of orders.
Void, §23-1-112.
Hospital and medical service corporations.
Subscription contracts, §23-75-111.
Legal insurance.
Management and exclusive agency contracts, §23-91-214.
Life settlements.
Approval requirements, §23-81-805.
Disclosures to owners, §23-81-809.
Prerequisites, §23-81-811.
Rescission, §23-81-811.
Lotteries.
Audit of commission, §23-115-206.
Participation by female-owned and minority-owned businesses, §23-115-401.
Procurement contracts generally, §23-115-501.
Vendors, §§23-115-501 to 23-115-504.
Money services.
Contracts with authorized delegates, §23-55-502.

CONTRACTS —Cont'd
Monopolies and restraint of trade.
Railroads.
Control of parallel or competing line.
Contracts for acquisition void, §23-11-311.
Prepaid funeral services.
Cancellation, §23-40-122.
Disposition of proceeds, §23-40-118.
Life insurance policy or annuity on contract.
Procurement by seller, notice to purchaser, §23-40-112.
Requirement, §23-40-112.
Public utilities.
Interruptible contracts for service with industrial users.
Power of utilities to make, §23-3-117.
Violation of act or orders of commission.
Void contracts, §23-1-112.
Railroads.
Conflicts of interest.
Officers interested in certain contracts.
Contracts void, §23-10-108.
Consolidation, §§23-11-305, 23-11-306.
Freight.
Liability.
Contracts abridging liability of railroad void, §23-10-408.
Monopolies.
Control of parallel or competing line.
Contracts for acquisition void, §23-11-311.
Telecommunications.
Exclusive privileges.
Contracts for prohibited, §23-17-105.
Title insurance.
Agency contracts, §23-103-407.
Trust companies.
Dissolution and liquidation.
Rejection of executory contracts, §23-49-112.

CONVEYANCES.
Insurance.
Deposits.
Assignment or conveyance of securities or assets, §23-63-906.

COOPERATIVES.
Electric cooperative corporations, §§23-4-1101 to 23-4-1107, 23-18-301 to 23-18-331.
Rural telecommunications cooperatives, §§23-17-201 to 23-17-242.

COOPERATIVES —Cont'd
Telecommunications.
Rural telecommunications cooperatives, §§23-17-201 to 23-17-242.

COPIES.
Securities regulation.
Records of commissioner, §23-42-206.

CORPORATIONS.
Banks.
Applicability of business corporation act, §23-48-326.
Burial associations.
Insurance, §§23-78-101 to 23-78-125.
Business corporation act, §23-48-326.
Banks.
Applicability, §23-48-326.
Trust companies.
Applicability, §23-51-111.
Electric cooperative corporations, §§23-4-1101 to 23-4-1107, 23-18-301 to 23-18-331.
Foreign electric light and power corporations.
Domestication.
Required, §23-3-108.
Service of process, §23-3-108.
Foreign investor companies.
Applicability, §23-32-402.
Telecommunications.
Generally, §§23-17-101 to 23-17-121.
Trust companies.
Applicability of corporate laws, §23-51-111.
Water power companies, §§23-18-401 to 23-18-410.

COSTS.
Banks.
Organizational expenses, §23-48-302.
Plans of exchange.
Appraiser's expenses, §23-48-603.
Safe deposit boxes.
Nonpayment of rent, §23-47-906.
Highways.
State highway and transportation department.
Contests.
Unsuccessful party to be taxed with costs, §23-2-428.
Deposit of costs.
Department not required to deposit, §23-2-428.
Mortgages and deeds of trust.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.

COSTS —Cont'd
Public service commission.
Contest before commission.
Unsuccessful party to be taxed with costs, §23-2-428.
Deposit of costs.
Commission not required to deposit, §23-2-428.
Recreational vehicle franchises.
Actions to recover damages, §23-112-1022.

COTTON.
Futures.
Contracts.
Validity of contracts relating to cotton, §23-44-103.

COUNSELORS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance.
Group and blanket health insurance.
Mental health coverage, §23-86-113.

COUNTIES.
Direct actions against insurer, §23-79-210.
Insurance.
Direct actions against insurer, §23-79-210.
Lotteries.
Local government authority preempted, §23-115-406.

COURT OF APPEALS.
Jurisdiction.
Public service commission.
Appeals of orders, §23-2-423.
Public service commission.
Appeals.
Orders of commission.
Acquisition, control or merger of public utilities, §23-3-313.
Stay of order pending review, §23-3-314.
Jurisdiction, §23-2-423.

COURTS.
Public utilities.
Environmental and economic protection.
Jurisdiction of courts, §23-18-525.

COVERED SECURITIES, §23-42-509.

CRANIOFACIAL ANOMALY CORRECTIVE SURGERY.
Health insurance coverage, §§23-79-1501 to 23-79-1503.
Definitions, §23-79-1501.
Required coverage, §23-79-1502.
Rules to implement provisions, §23-79-1503.

CRANIOMANDIBULAR DISORDER.
Health insurance.
Optional coverage to be offered, §23-79-150.
Health maintenance organizations.
Optional coverage to be offered, §23-79-150.
Hospital or medical services corporations.
Optional coverage to be offered, §23-79-150.

CREDIT LIFE AND DISABILITY INSURANCE, §§23-87-101 to 23-87-119.
Amounts of insurance authorized, §23-87-108.
Appeals.
Parties aggrieved by decisions of commissioner, §23-87-119.
Certificates.
Forms.
Filing, approval and withdrawal of forms, §23-87-112.
Policies.
Delivery of policy or certificate, §23-87-111.
Provisions of policies and certificates.
Disclosure to debtors, §23-87-110.
Citation of chapter, §23-87-101.
Claims.
Reporting, §23-87-115.
Compensation.
Limitations, §23-87-117.
Construction and interpretation, §23-87-105.
Definitions, §23-87-103.
Enforcement of provisions, §23-87-118.
Forms.
Policies.
Filing, approval and withdrawal of forms, §23-87-112.
Issuance of policies, §23-87-114.
Judicial review, §23-87-119.
Legislative declaration.
Purpose of provisions, §23-87-102.
Penalties.
Violations, §23-87-106.

CREDIT LIFE AND DISABILITY INSURANCE —Cont'd
Policies.
Amounts of insurance authorized, §23-87-108.
Certificates.
Delivery of policy or certificate, §23-87-111.
Disclosure of provisions to debtors, §23-87-110.
Compensation.
Limitations, §23-87-117.
Delivery, §23-87-111.
Enforcement of provisions, §23-87-118.
Existing insurance.
Choice of insurer, §23-87-116.
Forms.
Filing, approval and withdrawal, §23-87-112.
Issuance, §23-87-114.
Allowable forms, §23-87-107.
Penalties for violations, §23-87-106.
Premiums.
Schedules of premium rates, §23-87-113.
Provisions required.
Disclosure to debtors, §23-87-110.
Terms of insurance, §23-87-109.
Premiums.
Schedule of premium rates, §23-87-113.
Purpose of provisions, §23-87-102.
Rates.
Schedule, §23-87-113.
Refunds, §23-87-113.
Reports.
Claims, §23-87-115.
Scope of chapter, §23-87-104.
Short title, §23-87-101.
Terms of insurance, §23-87-109.

CREDITOR-PLACED INSURANCE, §§23-101-101 to 23-101-114.
Actual cash value.
Defined, §23-101-103.
ACV.
Defined, §23-101-103.
Applicability of provisions, §23-101-102.
Blanket insurance.
Defined, §23-101-103.
Certificates.
Approval of forms, §23-101-108.
Evidence of coverage, §23-101-107.
Claims.
Amount paid, §23-101-110.
Collateral.
Defined, §23-101-103.

CREDITOR-PLACED INSURANCE —Cont'd
Collateral —Cont'd
Security interest in collateral, §23-101-111.
Credit agreements.
Defined, §23-101-103.
Creditors.
Defined, §23-101-103.
Rights and duties of parties, §23-101-111.
Credit transactions.
Defined, §23-101-103.
Dates of insurance, §23-101-105.
Debtors.
Defined, §23-101-103.
Disclosures to debtor, §23-101-113.
Rights and duties of parties, §23-101-111.
Definitions, §23-101-103.
Disclosures to debtor, §23-101-113.
Evidence of coverage, §23-101-107.
Insurance tracking.
Defined, §23-101-103.
Insurers.
Defined, §23-101-103.
Lapse.
Defined, §23-101-103.
Legislative intent, §23-101-101.
Limited dual interest insurance.
Defined, §23-101-103.
Loss ratio.
Defined, §23-101-103.
Net debt.
Defined, §23-101-103.
Policies.
Approval of forms, §23-101-108.
Evidence of coverage, §23-101-107.
Premiums.
Calculation, §23-101-106.
Payment, §23-101-106.
Insurers' requirements, §23-101-112.
Rates, §23-101-108.
Refund of unearned premiums, §23-101-109.
Producers.
Defined, §23-101-103.
Prohibited coverages, §23-101-104.
Purpose of provisions, §23-101-101.
Rulemaking to implement provisions, §23-101-114.
Scope of provisions, §23-101-102.
Single interest insurance.
Claims.
Amount paid, §23-101-110.
Defined, §23-101-103.
Unearned premiums.
Refund of unearned premiums, §23-101-109.

CREDIT REPORTING DISCLOSURES.
Insurance.
Use of credit information in personal insurance, §§23-67-401 to 23-67-415.

CREDIT UNIONS.
Accounts and accounting.
Prohibited actions, §23-35-803.
Amendments to articles of incorporation and bylaws.
Approval, §23-35-302.
Application for loans.
Credit committee, §23-35-306.
Articles of incorporation.
Amendments.
Approval, §23-35-302.
Assets.
Reduction of assets, §23-35-608.
Authority of credit unions, §23-35-601.
Board of directors.
Bylaws.
Provisions and bylaws, §23-35-303.
Compensation, §§23-35-308, 23-35-804.
Duties, §23-35-304.
Election, §23-35-303.
Functions, §23-35-304.
Managing business affairs, §23-35-303.
Prohibited actions, §23-35-803.
Bylaws.
Amendments.
Approval, §23-35-302.
Board of directors.
Provisions and bylaws, §23-35-303.
Capital development companies.
Investment in and loans to, §23-32-202.
Central credit unions.
Operation, §23-35-102.
Purpose, §23-35-101.
Certificates of deposit.
Agency designations, §§23-32-501 to 23-32-509.
Charter.
Application, §23-35-301.
Procedure for obtaining, §23-35-301.
Christmas clubs, §23-35-602.
Clubs.
Thrift clubs, §23-35-602.
Committees.
Credit committee, §23-35-306.
Election, §23-35-303.
Supervisory committee, §23-35-603.
Compensation of officers, §23-35-804.
Conversions.
Federal credit unions.
Conversion to or from federal credit union, §23-35-702.

CREDIT UNIONS —Cont'd
Credit committee.
Application for loans, §§23-35-306, 23-35-603.
Loan officers, §23-35-306.
Definitions, §23-35-101.
Dissolution.
Voluntary dissolution.
Procedure, §§23-35-703, 23-35-705.
Dividends.
Declaration, §23-35-607.
Division.
Supervisor to administer, §23-35-201.
Eligibility for members, §23-35-401.
Examinations.
Fees, §23-35-203.
Report, §23-35-203.
Supervisor to examine, §23-35-203.
Expulsion of members, §23-35-404.
Federal credit unions.
Conversions.
Conversion to or from federal credit union, §23-35-702.
Fees.
Examination by state credit union supervisor, §23-35-203.
Supervision fee.
Annual fee, §23-35-205.
Fiscal year, §23-35-609.
Improper use of words "credit union."
Penalty, §23-35-801.
Inability to contact members.
Transfer of funds to reserves, §23-35-606.
Insurance.
Group annuities and group life insurance, §23-83-105.
Organization, §23-35-104.
Interest.
Loans, §23-35-603.
Investments.
Authorized investment, §23-35-604.
Joint tenancy.
Nonmembers, §23-35-504.
Liens.
Shares, §23-35-501.
Liquidation.
Involuntary dissolution.
Procedure, §23-35-705.
Involuntary liquidation, §23-35-704.
Procedure, §23-35-705.
Loans.
Commission or compensation for grant of loan, §23-35-802.
Credit committee.
Application for loan, §§23-35-306, 23-35-603.

CREDIT UNIONS —Cont'd
Loans —Cont'd
Extensions of credit, §23-35-603.
Interest, §23-35-603.
Limitations, §23-35-603.
Prohibited actions, §23-35-803.
Restriction, §23-35-603.
Meetings, §23-35-403.
Members.
Eligibility for membership, §23-35-401.
Expulsion of member, §23-35-404.
Inability to contact members.
Transfer of funds to reserves, §23-35-606.
Joint tenancy with nonmembers, §23-35-504.
Nonliability of members, §23-35-402.
Suspension.
Supervisory committee, §23-35-307.
Merger.
Procedure, §23-35-701.
Minors.
Shares in name of minor, §23-35-502.
Names.
Improper use of words "credit union," §23-35-801.
Restrictions on use, §23-32-209.
Oaths.
Officers, §23-35-305.
Officers.
Compensation, §23-35-308.
Oaths, §23-35-305.
Prohibited actions, §23-35-803.
Selection, §23-35-305.
Terms, §23-35-305.
Offices.
Subsidiary offices.
Establishment, §23-35-610.
Organization.
Insurance, §23-35-104.
Penalties.
Improper use of words "credit union," §23-35-801.
Reports.
Failure to file, §23-35-204.
False reports about credit union, §23-35-805.
Powers.
Enumeration, §23-35-601.
Purpose, §23-35-101.
Records.
Keeping records, §23-35-611.
Reduction of assets, §23-35-608.
Reports.
Examination by state credit union supervisor, §23-35-203.
False reports about credit union.
Penalty, §23-35-805.

CREDIT UNIONS —Cont'd
Reports —Cont'd
Penalty for failure to file, §23-35-204.
Reserves.
Composition, §23-35-605.
Inability to contact members.
Transfer of funds to reserve, §23-35-606.
Requirements, §23-35-605.
Setting aside money for reserves.
Method, §23-35-605.
Rules and regulations.
Supervisor.
Supervision of credit union, §23-35-610.
Shares.
Commission or compensation for sale, §23-35-802.
Defined, §23-35-501.
Dividends.
Declaration, §23-35-607.
Generally, §23-35-501.
Lien on shares, §23-35-501.
Minors.
Shares in name of minor, §23-35-502.
No individual liability, §23-35-402.
Prohibited actions, §23-35-803.
Trusts.
Issuance in trust, §23-35-503.
Subsidiaries.
Establishment of subsidiary offices, §23-35-610.
Supervision fee.
Annual supervision fee, §23-35-205.
Supervisor.
Division.
Administration of division, §23-35-201.
Examination, §23-35-203.
Rules and regulations.
Supervision of credit union, §23-35-202.
Supervisory committee.
Duties, §23-35-307.
Powers, §23-35-307.
Suspension of members, §23-35-307.
Suspension of operations.
Involuntary liquidation, §23-35-704.
Taxation.
Extent of taxation, §23-35-103.
Trusts and trustees.
Shares issued in trust, §23-35-503.
Voting, §23-35-403.
Year.
Fiscal year, §23-35-609.

CRIMINAL HISTORY RECORD CHECKS.
Charitable bingo and raffles.
Authorized organizations.
License applicants, §23-114-303.
Greyhound racing.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Horse racing.
Owners, trainers, jockeys, and jockey agents, §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Lotteries.
Commission employees, §23-115-303.
Commission members, §23-115-203.
Retailers, §23-115-601.
Vendors, §23-115-501.
Mortgage bankers, brokers and servicers.
Licensure, §23-39-505.
Professional employer organizations.
Controlling persons, §23-92-405.

CRIMINAL LAW AND PROCEDURE.
Amusement rides and attractions, §23-89-504.
Amusements.
Safety of patrons, §23-89-514.
Automobile clubs or associations, §23-77-103.
Aviation, §23-14-104.
Banks.
Acceptance of bribes, §23-50-108.
Bank holding company violations, §23-48-403.
Bribery, §23-50-106.
Certification of check with insufficient funds, §23-50-110.
Circulation of false rumors, §23-50-104.
Embezzlement or misuse of funds, §23-50-105.
Examiners.
Disclosure or falsification of information, §23-50-109.
False reports by commissioners or examiners, §23-50-108.
Falsification of records, §§23-50-106, 23-50-107.
Loans secured by liens on agricultural lands.
Violation of prepayment privileges, §23-32-203.

CRIMINAL LAW AND PROCEDURE —Cont'd
Banks —Cont'd
Misleading use of name or title, §23-50-103.
Runs on banks.
Causing, §23-50-104.
Trust funds.
Loans of trust funds to officers and employees, §23-47-707.
Unauthorized use of name or title, §23-32-209.
Bucket shops.
Commodities futures, §23-44-102.
Burial associations.
Failure to comply with provisions, §23-78-104.
False claim, promise or representation of agent, §23-78-114.
False entries in books, §23-78-118.
False statements, §23-78-111.
Carriers, §23-16-201.
Agreements to pay charge for additional mode of transportation, §23-10-109.
Charitable bingo and raffles enabling act.
Violation of provisions, §23-114-104.
Citizens band radios.
Violations of restrictions on use of equipment, §23-1-115.
Commodities futures.
Bucket shops, §23-44-102.
Credit unions.
False reports about credit union, §23-35-805.
Misleading conduct as credit union, §23-35-801.
Officers, directors, etc.
Prohibited acts, §23-35-803.
Use of words "credit union," §23-35-801.
Dog racing.
Compliance with franchise, §23-111-501.
Failure to appear or testify at hearings, §23-111-205.
Failure to pay tax, §23-111-513.
False affidavits of officers and directors, §23-111-406.
Improper wagering, §23-111-508.
Issuance of sales tax-free passes, §23-111-510.
Fraternal benefit societies.
Fraudulent statements or solicitations of membership, §23-74-703.
Fraud.
Insurance holding companies, §23-63-522.

CRIMINAL LAW AND PROCEDURE —Cont'd
Fraud —Cont'd
Securities, §23-42-104.
Funeral benefits.
Sale of prepaid benefits, §23-40-106.
Failure to deposit contract proceeds, §23-40-118.
Failure to file annual report, §23-40-119.
Greyhound racing.
Wagering on electronic games of skill.
False statements on employer or supplier license applications, §23-113-303.
Health maintenance organizations, §23-76-105.
Horse racing.
Compliance with license, §23-110-410.
Failure to appear or testify at hearings, §23-110-205.
Failure to pay tax, §23-110-415.
False applications for employment, §23-110-308.
Improper wagering, §23-110-405.
Issuance of sales tax-free passes, §23-110-411.
Wagering on electronic games of skill.
False statements on employer or supplier license applications, §23-113-303.
Insurance.
Advertising by health and accident insurers and prepaid health plans, §23-66-316.
Default by insurance producer, §23-64-232.
Disclosure of confidential information, §23-66-315.
Domestic stock and mutual insurers.
Records.
Concealment or removal from home office, §23-69-134.
Unauthorized dividends, §23-69-131.
False or misleading statements, §23-60-109.
Fraudulent insurance acts, §23-66-512.
Holding companies, §23-63-522.
Cease and desist orders.
Failure to obey, §23-63-529.
Proceedings for violations, §23-63-522.
Investigations.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Misrepresentation of other policies, §23-66-306.

CRIMINAL LAW AND PROCEDURE —Cont'd
Insurance —Cont'd
Replacement of policy, violation of provisions, §23-66-307.
Surplus lines insurance.
Failure to file quarterly statement or remit tax, §23-65-316.
Unauthorized insurance.
Cease and desist orders.
Failure to obey, §23-65-101.
Records produced on order.
Refusal to obey order, §23-65-104.
Life settlements.
Fraudulent life settlement acts, §23-81-816.
Loan brokers.
Advance fee loan brokers, §23-39-405.
Loans.
Prepayment privilege for loans secured by agricultural liens.
Violations by lender, §23-32-203.
Lotteries.
Fraud, §23-115-902.
Minors purchasing tickets, §23-115-901.
Retailers, false statement on license application, §23-115-903.
Retailers continuing to operate after injunction of business, §23-115-609.
Money services licensees, §23-55-806.
Mortgage bankers, brokers and servicers, §23-39-516.
Motor carriers, §23-13-257.
Alcoholic beverages.
Operation while consuming or under influence of, §23-13-258.
Operation without certificate or permit, §23-13-234.
Names.
Banks.
Misleading use, §23-50-103.
Financial institutions.
Unauthorized use of name or title, §23-32-209.
Property insurance.
Willful violations by insurer, §23-88-204.
Public service commission, §23-2-409.
Service of process, §23-2-405.
Public utilities.
False testimony or reports, §23-1-105.
Railroads.
Access to railroad books by commissioners, §23-4-718.
Express offices and delivery, §23-10-302.

CRIMINAL LAW AND PROCEDURE —Cont'd
Railroads —Cont'd
Extra pay to employees for furnishing cars to shipper, §23-10-429.
Livestock or poultry.
Shipper's pass, §23-10-441.
Operation and maintenance.
Blocks in frogs and guardrails, §23-12-512.
Discharging firearms or throwing objects, §23-12-804.
Equipment on track motor cars, §23-12-404.
Establishment, discontinuance or modification of service, §23-12-609.
Headlights, §23-12-402.
Hospital facilities provided in state, §23-12-508.
Intoxication of engineer or conductor, §23-12-807.
Lights on switches, §23-12-408.
Maintenance of right-of-way, §23-12-201.
Repairs to cars, §23-12-407.
Stopping train within town limits, §23-12-606.
Telephone and telegraph operator duty hours, §23-12-510.
Trespassers boarding trains, §23-12-802.
Unsafe tracks, bridges, etc., §23-12-103.
Willful interference with railroads, §23-12-805.
Rates and charges, §23-4-605.
Schedule of rates, §23-4-604.
Savings and loan associations.
Cease and desist orders.
Failure to obey, §23-37-212.
Securities.
Fraud, §23-42-104.
Offer or sale of unregistered and nonexempt securities, §23-42-104.
Violation of commissioner's rule or order, §23-42-104.
Trust companies.
Acquisition violations, §23-51-139.
Conflicts of interest, §23-51-145.
Falsification of information, §23-51-144.
Reports of apparent crimes, §23-51-149.

CURRENCY.
Exchange.
Uniform money services act, §§23-55-101 to 23-55-1006.

CUSTOMER-BANK COMMUNICATION TERMINALS, §§23-48-801 to 23-48-810.

D

DAMAGES.
Insurance.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Unauthorized insurers.
Actions against unauthorized insurers, §23-65-205.
Life settlements.
Fraudulent life settlement acts, §23-81-815.
Loan brokers.
Advance fee loan brokers.
Violations of subchapter, §23-39-405.
Mortgages and deeds of trust.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Motor vehicles.
Underinsured motorists, §23-89-209.
Public utilities.
Franchises.
Municipal franchises.
Violation, §23-3-116.
Punitive damages.
Underinsured motorists.
Tentative settlement agreement, §23-89-209.
Savings and loan associations.
Limitation on right to recover damages from association, §23-37-507.
Telecommunications.
Mental anguish.
Negligence in receiving, transmitting or delivering messages, §23-17-112.
Underinsured motorists, §23-89-209.
Water power companies.
Eminent domain, §23-18-406.
Land flooded or taken.
Assessment of damages by court, §23-18-405.

DAMS AND RESERVOIRS.
Water power companies.
Erection of dams to develop electric power, §23-18-402.
Time to begin work, §23-18-404.

DAMS AND RESERVOIRS —Cont'd
Water power companies —Cont'd
Railroad in connection with construction of dams.
Acquisition of right of way.
Eminent domain, §23-18-407.
Use of power.
Application for permit to use, §23-18-403.
Compensation, §23-18-403.

DEAF AND HEARING IMPAIRED.
Telecommunications devices.
Surcharges to provide telecommunications for deaf and hearing impaired, §23-17-119.

DEALERS.
Recreational vehicle dealers, §§23-112-1001 to 23-112-1023.

DEATH.
Certificates of deposit.
Agency designation.
Termination, §23-32-504.
Fraternal benefit societies.
Contractual benefits provided by societies.
Death benefits, §23-74-401.
Railroads.
Employees.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Liability.
Contributory negligence no complete defense, §23-12-904.

DEBIT CARDS.
Automatic teller machines.
Sharing of terminals, §23-32-208.
Fees.
Usage fee, §23-32-208.

DEBTOR AND CREDITORS.
Insurance.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Group life insurance and annuities.
Delivery of certificate to insured debtors, §23-83-121.
Lotteries.
Withholding from prizes of debtors owing money to state, §§23-115-1001 to 23-115-1006.

DEBTS.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

DEBTS —Cont'd
Rural telecommunications cooperatives.
Nonliability of members and shareholders, §23-17-233.

DECEDENTS' ESTATES.
Actions.
Rural telecommunications cooperatives, §23-17-238.
Claims.
Actions.
Rural telecommunications cooperatives, §23-17-238.
Franchises.
Motor vehicle franchises, §23-112-403.
Lotteries.
Unclaimed proceeds, §23-115-403.
Motor vehicle franchises, §23-112-403.
Rural telecommunications cooperatives.
Actions, §23-17-238.

DECLARATORY JUDGMENTS.
Mortgage bankers, brokers and servicers.
Discipline of licensees, §23-39-514.
Securities regulation.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.

DEFAULTS.
Industrial loan institutions.
Payment of installments, §23-36-112.
Late charges, §23-36-112.

DEFENSES.
Insurance.
Health insurance.
Time limit on certain defenses, §23-85-107.
Unauthorized insurers.
Actions against, §23-65-205.
Lotteries.
Closure of retailer's business by commission.
Administrative hearing, §23-115-608.
Retailers selling tickets to minors.
Good faith reliance on proof of age, §23-115-901.

DEFINED TERMS.
Abortion.
Health insurance exchanges, abortion coverage prohibited, §23-79-156.
Access.
Title insurance, §23-103-417.

DEFINED TERMS —Cont'd
Access line.
Telecommunications regulatory reform, §23-17-403.
Access minute.
Telecommunications, §23-17-403.
Access to video service.
Video service act, §23-19-202.
Accident and health insurance, §23-62-103.
Account.
Agency designation on certificates of deposit, §23-32-501.
Certificates of deposit, §23-47-301.
Life and health insurance guarantee association, §23-96-104.
Trust companies, §23-51-102.
Account current.
Insurance producers, §23-64-232.
Account rendered.
Insurance producers, §23-64-232.
Accredited state.
Business transacted with producer controlled property and casualty insurer, §23-63-1102.
Acquire.
Electric cooperative corporations, §23-18-302.
Regional savings and loan act, §23-37-802.
Rural telecommunications cooperatives, §23-17-202.
Acquiring party.
Public utilities, §23-3-302.
Acquiring person.
Domestic stock and mutual insurers, §23-69-142.
Acquisition.
Insurance holding company regulation, §23-63-525.
Act as a fiduciary.
Trust companies, §23-51-102.
Actual cash value (ACV).
Creditor-placed insurance, §23-101-103.
Actual malice.
Fraudulent insurance acts, §23-66-501.
Actuarial certification.
Small employer health insurance, §23-86-202.
Actuarial opinion summary.
Property and casualty actuarial opinion law, §23-63-1902.
Actuary.
Insurance managing general agents, §23-64-402.
Reinsurance intermediaries, §23-62-402.

DEFINED TERMS —Cont'd
Acute condition.
Health insurance consumer protection, §23-99-403.
Adjusted RBC report.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Adjuster.
Insurance, §23-64-102.
Administer.
Trust companies, §23-51-102.
Administrative expenses.
Lotteries, §23-115-103.
Administrative order.
Lotteries, §23-115-103.
Admitted assets.
Insurance company investments, §23-63-805.
Advance fee.
Loan brokers, §23-39-401.
Adverse action.
Use of credit information in personal insurance act, §23-67-404.
Advertisement.
Life settlements, §23-81-802.
Motor vehicle commission, §23-112-103.
Advertising.
Public utilities.
Rates and charges, §23-4-207.
Advisory organization.
Rates and rating organizations, §23-67-202.
Affected area.
Bank commissioner emergency powers, §23-46-212.
Affected banks.
Bank commissioner emergency powers, §23-46-212.
Affiliate.
Banks, §§23-45-102, 23-48-105.
Broadband over power lines enabling act, §23-18-801.
Home loan protection act, §23-53-103.
Insurance holding company regulation, §23-63-503.
Insurance producers, §23-64-520.
Insurance sales consumer protection, §23-66-603.
Loan brokers, §23-39-401.
Public utilities, §23-3-302.
Telecommunications regulatory reform, §23-17-403.
Trust companies, §23-51-102.
Use of credit information in personal insurance act, §23-67-404.

DEFINED TERMS —Cont'd
Affiliated.
Insurance holding company regulation, §23-63-503.
Affiliated bank.
Subsidiary trust companies, §23-47-801.
Affiliated company.
Captive insurance companies, §23-63-1601.
Light, heat and power utilities, §23-18-103.
Affiliated group.
Surplus lines insurance, §23-65-304.
Affiliation period.
Health insurance portability and accountability, §23-86-303.
Agent.
Certificates of deposit, §§23-32-501, 23-47-301.
Comprehensive health insurance pool, §23-79-503.
Health maintenance organizations, §23-76-120.
Insurance, §23-64-102.
Securities, §23-42-102.
Aggregate amounts.
Insurance company investments, §23-63-805.
Aggregate individually underwritten policy experience.
Health insurance, group, conversion policies, §23-86-115.
Aggregator of retail customers.
Regulation of electric demand response act, §23-18-1002.
AICCLP member.
Telecommunications, §23-17-403.
AICCLP rate adjustment.
Telecommunications, §23-17-403.
Air commerce, §23-14-102.
Aircraft.
Air commerce, §23-14-102.
Alcohol or drug dependency treatment facility.
Insurance policies, §23-79-139.
Alien.
Insurance, §23-60-102.
Alien captive insurance company, §23-63-1601.
Alien insurer.
Surplus lines insurance, §23-65-304.
All-terrain vehicle.
Motor vehicle commission, §23-112-103.
Amusement attraction.
Casualty insurance, §23-89-502.

DEFINED TERMS —Cont'd
Amusement ride.
Casualty insurance, §23-89-502.
Ancillary agreement.
Electric utility storm recovery securitization financing, §23-18-902.
Ancillary state.
Insurance company rehabilitation and liquidation, §23-68-102.
Annual percentage rate.
Home loan protection act, §23-53-103.
Annual unseparated unlimited loop requirement.
Telecommunications regulatory reform, §23-17-403.
Annuity issuer.
Structured settlement protection act, §23-81-702.
Anti-arson application.
Property insurance, §23-88-202.
Any willing provider law.
Choice of health care providers by patients, enforcement of any willing provider laws, §23-99-802.
Applicable law.
Banks, §23-45-106.
Applicant.
Fair mortgage lending act, §23-39-502.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Long-term care insurance, §23-97-304.
Medicare supplement insurance minimum standards, §23-79-403.
Money services, §23-55-102.
Use of credit information in personal insurance act, §23-67-404.
Utility facility environmental and economic protection, §23-18-503.
Appointed actuary.
Property and casualty actuarial opinion law, §23-63-1902.
Appraisal.
Credit unions.
Loans and extensions of credit in advance, §23-35-603.
Area of sales responsibility.
Recreational vehicle franchise act, §23-112-1003.
Arkansas associations.
Regional savings and loan act, §23-37-802.
Arkansas bank, §23-45-102.
Arkansas bank holding company, §23-45-102.
Arkansas banking code, §23-45-102.

DEFINED TERMS —Cont'd
Arkansas greyhound racing law.
Wagering on electronic games of skill, §23-113-103.
Arkansas intrastate carrier common line pool.
Telecommunications regulatory reform, §23-17-403.
Arkansas intrastate telecommunications, §23-17-403.
Arkansas savings and loan holding company.
Regional savings and loan act, §23-37-802.
Assignee.
Electric utility storm recovery securitization financing, §23-18-902.
Assignment.
Securities regulation, §23-42-307.
Association.
Captive insurance companies, §23-63-1601.
Life and health insurance guaranty association, §23-96-104.
Long-term care insurance, §23-97-304.
Regional savings and loan act, §23-37-802.
Savings and loan associations, §23-37-101.
Association captive insurance company, §23-63-1601.
Assumptions.
Bank mergers, conversions or other corporate actions, §23-48-501.
Attorney.
Reciprocal insurers, §23-70-101.
Authorized assessment.
Life and health insurance guaranty association, §23-96-104.
Authorized control level event.
Risked-based capital requirements for health organizations, §23-63-1505.
Authorized control level RBC.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Authorized delegate.
Money services, §23-55-102.
Authorized insurer, §23-60-102.
Surplus lines insurance, §23-65-304.
Authorized organization.
Charitable bingo and raffles enabling act, §23-114-102.
Authorized representative.
Motor vehicle event data recorders, §23-112-107.

DEFINED TERMS —Cont'd
Authorized trust institutions, §23-51-102.
Auto auction.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Automobile club or association, §23-77-101.
Automobile collision coverage.
Casualty insurance, §23-89-301.
Automobile liability coverage.
Casualty insurance, §23-89-301.
Automobile physical damage coverage.
Casualty insurance, §23-89-301.
Average schedule company.
Telecommunications regulatory reform, §23-17-403.
Avoided cost.
Public utilities, §23-3-702.
Baggage.
Carriers of passengers, §23-10-209.
Bail bond service.
Automobile clubs or associations, §23-77-101.
Bank, §23-45-102.
Money services, §23-55-102.
Trust companies, §23-51-102.
Bankers.
Financial institutions, §23-32-209.
Bank holding company, §23-45-102.
Bank mergers, conversions or other corporate actions, §23-48-501.
Bank premises, §23-45-102.
Bank service companies.
Bank subsidiaries, §23-47-603.
Bank services.
Bank subsidiaries, §23-47-603.
Bank subsidiary.
Bank holding companies, §23-48-401.
Bank supervisory agency, §23-45-102.
Trust companies, §23-51-102.
Base premium rate.
Small employer health insurance, §23-86-202.
Basic local exchange service.
Telecommunications regulatory reform, §23-17-403.
Beneficiary.
Certificates of deposit, §§23-32-501, 23-47-301.
Benefit contract.
Fraternal benefit societies, §23-74-104.
Benefit level.
Freedom of choice among health benefit plans, §23-86-406.

DEFINED TERMS —Cont'd
Benefit member.
Fraternal benefit societies, §23-74-104.
Benefit plan.
Life and health insurance guaranty association, §23-96-104.
Bingo equipment, §23-114-102.
Bingo face, §23-114-102.
Bingo session, §23-114-102.
Blanket accident and health insurance.
Group and blanket health insurance, §23-86-101.
Blanket insurance.
Creditor-placed insurance, §23-101-103.
Blind.
Insurance trade practices.
Home service system of distribution, §23-66-402.
Block of business.
Health insurance, §23-79-153.
Bona fide association.
Health insurance portability and accountability, §23-86-303.
Bona fide loan discount points.
Home loan protection act, §23-53-103.
Bona fide taxicab service.
Motor carriers, §23-13-206.
Bondholder.
Electric utility storm recovery securitization financing, §23-18-911.
Border communities.
Insurance, §23-64-102.
Border trade areas.
Insurance, §23-64-102.
Borrower.
Loan brokers.
Prohibition of advance fee loan brokerage, §23-39-401.
Boycott, coercion and intimidation.
Trade practices, §23-66-206.
Branch.
Trust companies, §23-51-102.
Branch business.
Captive insurance companies, §23-63-1601.
Branch location.
Motor vehicle commission, §23-112-103.
Branch manager.
Fair mortgage lending act, §23-39-502.
Branch office.
Fair mortgage lending act, §23-39-502.
Regional savings and loan act, §23-37-802.
Securities, §23-42-102.

DEFINED TERMS —Cont'd
Branch operations.
Captive insurance companies, §23-63-1601.
Broadband affiliate, §23-18-801.
Broadband Internet service provider, §23-18-801.
Broadband operator, §23-18-801.
Broadband services, §23-18-801.
Broadband system, §23-18-801.
Broker.
Insurance, §23-64-102.
Life settlements, §23-81-802.
Motor carriers, §23-13-203.
Motor vehicle commission, §23-112-103.
Registration of motor carriers engaged in interstate commerce, §23-13-601.
Savings and loan associations, §23-37-101.
Broker-dealer.
Securities, §23-42-102.
Bucket shop, §23-44-101.
Burial association, §23-78-101.
Business entity.
Insurance producer licensing, §23-64-502.
Business of insurance.
Fraudulent insurance acts, §23-66-501.
Business of life settlements, §23-81-802.
Buying and selling service.
Automobile clubs or associations, §23-77-101.
Cable service.
Video service act, §23-19-202.
Called assessment.
Life and health insurance guaranty association, §23-96-104.
Cap.
Insurance company investments, §23-63-841.
Capital.
Trust companies, §23-51-102.
Capital base.
Banks, §§23-45-102, 23-48-310.
Trust companies, §23-51-102.
Capital development corporation.
Banks, §23-45-102.
Captive insurance company, §23-63-1601.
Carrier.
Freight, §23-10-402.
Health insurance, §23-79-153.
Small employer health insurance, §23-86-202.

DEFINED TERMS —Cont'd
Carrier common line revenue requirement.
Telecommunications, §23-17-403.
Carve-out arrangement.
Health insurance coverage for mental illness, §23-99-503.
Case characteristics.
Small employer health insurance, §23-86-202.
Cash accommodation items.
Prepaid funeral benefits, §23-40-103.
Casino gambling.
Lotteries, §23-115-103.
Casualty insurance, §23-62-105.
Insurance policies.
Simplification, §23-80-303.
CBCT.
Automatic teller machines, §23-48-801.
Certificate.
Fraternal benefit societies, §23-74-104.
Long-term care insurance, §23-97-304.
Medicare supplement insurance minimum standards, §23-79-403.
Motor carriers, §23-13-203.
Certificate form.
Medicare supplement insurance minimum standards, §23-79-403.
Certificate of extension project.
Gas utilities, §23-3-602.
Certificate of franchise authority.
Video service act, §23-19-202.
Certified application counselor.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Certified licensed producer.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Charter.
Trust companies, §23-51-102.
Chemotherapy.
Health insurance, outpatient coverage, §23-85-133.
Children's preventive health care services.
Minimum basic benefit policies, §23-98-102.
Chronically ill.
Life settlements, §23-81-802.
Church plan.
Comprehensive health insurance pool, §23-79-503.
Health insurance portability and accountability, §23-86-303.
Churning of business.
Trade practices, §23-66-206.

DEFINED TERMS —Cont'd
Claimant.
Late payment of claims by health carriers, §23-66-215.
Claimant agencies.
Lotteries, withholding from prizes, §23-115-1002.
Claim loss information.
Insurance, §23-63-111.
Surplus lines insurance, §23-65-311.
Claims-made policy.
Insurance policies.
Commercial property and casualty insurance, §23-79-302.
Class.
Health insurance, group, conversion policies, §23-86-115.
Class of business.
Small employer health insurance, §23-86-202.
Class one money market mutual fund.
Domestic stock and mutual insurers, §23-69-134.
CLEC.
Telecommunications regulatory reform, §23-17-403.
Client.
Professional employer organizations, §23-92-402.
Trust companies, §23-51-102.
Closed block of business.
Health insurance, §23-79-153.
Closing.
Title insurance, §23-103-402.
Closing agent.
Title insurance, §23-103-402.
Closing of a loan.
Loan brokers.
Prohibition of advanced fee loan brokerage, §23-39-401.
COBRA.
Insurance.
Minimum basic benefit policies, §23-98-102.
COBRA continuation provision.
Health insurance portability and accountability, §23-86-303.
Coemployer.
Professional employer organizations, §23-92-402.
Coemployment relationship.
Professional employer organizations, §23-92-402.
Coerce.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Collar.
Insurance company investments, §23-63-841.
Collateral.
Creditor-placed insurance, §23-101-103.
Commence to construct.
Utility facility environmental and economic protection, §23-18-503.
Commercial mobile radio service.
Surcharges to provide telecommunications for deaf and hearing impaired, §23-17-119.
Commercial mobile service.
Telecommunications regulatory reform, §23-17-403.
Commercial motor vehicle.
Registration of motor carriers engaged in interstate commerce, §23-13-601.
Commercial risk.
Rates and rating organizations, §23-67-202.
Commercial zone.
Motor carriers, §23-13-203.
Common carrier.
Uninsured motorist liability insurance, §23-16-301.
Common carrier by aircraft, §23-14-102.
Common carrier by motor vehicle, §23-13-203.
Common ownership and control.
Captive insurance companies, §23-63-1614.
Company.
Bank holding companies, §§23-45-102, 23-48-401.
Public service commission, §23-3-120.
Public utilities, §23-2-302.
Regional savings and loan act, §23-37-802.
Simplification of insurance policies, §23-80-203.
Trust companies, §23-51-102.
Company action level event.
Risked-based capital requirements for health organizations, §23-63-1503.
Company action level RBC.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Compensation.
Credit life and disability insurance, §23-87-117.
Lotteries, §23-115-103.

DEFINED TERMS —Cont'd
Compensation from an insurer or other third party.
Insurance producers, §23-64-520.
Compensation from the customer.
Insurance producers, §23-64-520.
Competing local exchange carrier.
Telecommunications regulatory reform, §23-17-403.
Competitive market.
Rates and rating organizations, §23-67-202.
Complaint.
Trade practices, §23-66-206.
Completed operations liability.
Liability risk retention, §23-94-203.
Construction.
Horse racing, disposition of wagering proceeds, §23-110-407.
Consumer.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Use of credit information in personal insurance act, §23-67-404.
Consumer loans and credit sales.
Banks, §23-47-501.
Consumer reporting agency.
Use of credit information in personal insurance act, §23-67-404.
Continuation coverage.
Comprehensive health insurance pool, §23-79-503.
Continuing care.
Continuing care provider regulation, §23-93-103.
Contract.
Property insurance, §23-88-203.
Contract beneficiary.
Prepaid funeral benefits, §23-40-103.
Contract carrier.
Safe transportation of railroad employees by contract carriers, §23-16-502.
Contract carrier by motor vehicle, §23-13-203.
Contract for sale.
Commodities futures, §23-44-101.
Motor vehicle dealers, §23-112-316.
Used motor vehicle dealers, §23-112-613.
Contract owner.
Life and health insurance guaranty association, §23-96-104.
Contract price.
Prepaid funeral benefits, §23-40-103.
Contract proceeds.
Prepaid funeral benefits, §23-40-103.

DEFINED TERMS —Cont'd
Contractual obligation.
Life and health insurance guarantee association, §23-96-104.
Professional liability insurance, §23-91-203.
Control.
Banks, §23-48-105.
Fair mortgage lending act, §23-39-502.
Insurance holding company regulation, §23-63-503.
Money services, §23-55-102.
Public utilities, §23-3-302.
Surplus lines insurance, §23-65-304.
Trust companies, §23-51-102.
Control affiliate.
Fair mortgage lending act, §23-39-502.
Controlled insurer.
Business transacted with producer controlled property and casualty insurer, §23-63-1102.
Controlled unaffiliated business.
Captive insurance companies, §23-63-1601.
Controlling.
Insurance holding company regulation, §23-63-503.
Controlling person.
Professional employer organizations, §23-92-402.
Reinsurance intermediaries, §23-62-402.
Controlling producer.
Business transacted with producer controlled property and casualty insurer, §23-63-1102.
Control person.
Fair mortgage lending act, §23-39-502.
Conversion.
Motor vehicle commission, §23-112-103.
Converting bank.
Bank mergers, conversions or other corporate actions, §23-48-501.
Cooperative.
Rural telecommunications cooperatives, §23-17-202.
Co-op rural electric distribution cooperatives, §23-4-901.
Copayment.
Choice of health care providers by patients, §23-99-203.
Corporate action.
Banks, §23-48-506.
Corporation.
Electric cooperative corporations, §23-18-302.
Public service commission, §23-3-120.

DEFINED TERMS —Cont'd
Corporation —Cont'd
Public utilities, §23-1-101.
Corrective order.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Corrective surgery.
Craniofacial anomaly corrective surgery insurance coverage, §23-79-1501.
Cost-of-service recovery.
Gas utilities, §23-3-602.
Counterparty exposure amount.
Insurance company investments, §23-63-841.
Court.
Banks, §23-45-102.
Covered.
Insurance company investments, §23-63-841.
Covered claim.
Property and casualty insurance guarantee, §23-90-103.
Covered employee.
Professional employer organizations, §23-92-402.
Covered health care services.
Freedom of choice among health benefit plans, §23-86-406.
Covered person.
Colorectal cancer prevention and treatment, §23-79-1201.
Comprehensive health insurance pool, §23-79-503.
Dental point of service option, §23-99-603.
Freedom of choice among health benefit plans, §23-86-406.
Health insurance consumer protection, §23-99-403.
Prescription drug card uniformity, §23-80-402.
Primary eye care provider act, §23-99-302.
Recoupment from medical providers, §23-63-1801.
Covered policy.
Life and health insurance guarantee association, §23-96-104.
Covered securities, §23-42-102.
Covered service.
Primary eye care provider act, §23-99-302.
Craniofacial anomaly.
Craniofacial anomaly corrective surgery insurance coverage, §23-79-1501.

DEFINED TERMS —Cont'd
Creditable coverage.
Comprehensive health insurance pool, §23-79-503.
Health insurance portability and accountability, §23-86-303.
Credit agreement.
Creditor-placed insurance, §23-101-103.
Credit information.
Use of credit information in personal insurance act, §23-67-404.
Credit life and disability insurance, §23-87-103.
Credit life insurance, §23-87-103.
Creditor.
Credit life and disability insurance, §23-87-103.
Creditor-placed insurance, §23-101-103.
Home loan protection act, §23-53-103.
Creditor-placed insurance, §23-101-103.
Credit report.
Use of credit information in personal insurance act, §23-67-404.
Credit score.
Use of credit information in personal insurance act, §23-67-404.
Credit transaction.
Creditor-placed insurance, §23-101-103.
Currency exchange.
Money services, §23-55-102.
Customarily collected.
Home service system of distribution, §23-66-402.
Customarily marketed, issued or delivered.
Home service system of distribution, §23-66-402.
Customer.
Insurance sales consumer protection, §23-66-603.
Portable electronics insurance, §23-88-501.
Self-service storage insurance, §23-64-233.
Customer-bank communication terminals, §23-48-801.
Data development period.
Telecommunications, §23-17-403.
Day.
Banks, §23-45-102.
Dealer.
Recreational vehicle franchise act, §23-112-1003.

DEFINED TERMS —Cont'd
Dealer agreement.
Recreational vehicle franchise act, §23-112-1003.
Debt.
Lotteries, withholding from prizes, §23-115-1002.
Debt cancellation agreement.
Insurance, §23-60-102.
Debtor.
Credit life and disability insurance, §23-87-103.
Creditor-placed insurance, §23-101-103.
Lotteries, withholding from prizes, §23-115-1002.
Deceit.
Securities, §23-42-102.
Defamation.
Trade practices, §23-66-206.
Defraud.
Securities, §23-42-102.
Delinquency proceeding.
Insurance company rehabilitation and liquidation, §23-68-102.
Delivery prior to sale.
Motor vehicle dealers, §23-112-316.
Used motor vehicle dealers, §23-112-613.
Demand response.
Regulation of electric demand response act, §23-18-1002.
De novo charter.
Banks, §23-45-102.
Savings and loan associations, §23-37-404.
Dentist.
Dental point of service option, §23-99-603.
Department regulations.
Banks, §23-45-102.
Dependent.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Structured settlement protection act, §23-81-702.
Deposit account.
Banks, §23-45-102.
Depositor.
Title insurance, §23-103-402.
Depository.
Title insurance, §23-103-402.
Depository institution.
Banks, §23-45-102.
Insurance sales consumer protection, §23-66-603.
Trust companies, §23-51-102.

DEFINED TERMS —Cont'd
Deposits.
Banks, §23-45-102.
Regional savings and loan act, §23-37-802.
Derivative instrument.
Insurance company investments, §23-63-841.
Derivative transaction.
Insurance company investments, §23-63-841.
Designate.
Financial institutions, §23-32-207.
Designate in writing.
Financial institutions, §23-32-207.
Designation.
Financial institutions, §23-32-207.
Designee.
Used motor vehicle buyer protection, §23-112-602.
Developmental disorders.
Health insurance coverage for mental illness, §23-99-503.
Devisee.
Agency designation on certificates of deposit, §23-32-501.
Certificates of deposit, §23-47-301.
Diabetes self-management training.
Insurance coverage, §23-79-601.
Diagnostic mammography.
Insurance policies, §23-79-140.
Direct.
Insurance company investments, §23-63-841.
Directly.
Insurance company investments, §23-63-841.
Direct reimbursement.
Insurance coverage for ambulance services, §23-79-148.
Disability insurance.
Genetic nondiscrimination in insurance act, §23-66-320.
Discounted present value.
Structured settlement protection act, §23-81-702.
Discount service.
Automobile clubs or associations, §23-77-101.
Dissenters' rights.
Bank mergers, conversions or other corporate actions, §23-48-501.
Distributable asset.
Insurance, §23-68-135.
Distributor.
Charitable bingo and raffles enabling act, §23-114-102.

DEFINED TERMS —Cont'd
Distributor —Cont'd
Motor vehicle commission, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
Distributor branch.
Motor vehicle commission, §23-112-103.
Distributor representative.
Motor vehicle commission, §23-112-103.
Divisible surplus.
Life insurance policies and annuities, §23-81-108.
DNA.
Genetic nondiscrimination in insurance act, §23-66-320.
Domestic abuse.
Trade practices, §23-66-206.
Domestic corporation.
Health maintenance organizations, §23-76-102.
Domestic health organization.
Risked-based capital requirements, §23-63-1501.
Domestic insurer, §23-60-102.
Protected cell company act, §23-63-1703.
Risk-based capital act, §23-63-1302.
Domestic public utility.
Merger or acquisition of control, §23-3-302.
Domicile.
Liability risk retention, §23-94-203.
Domiciliary state.
Insurance company rehabilitation and liquidation, §23-68-102.
Drafter.
Used motor vehicle buyer protection, §23-112-602.
Durable equipment.
Insurance company investments, §23-63-827.
Electing company.
Telecommunications regulatory reform, §23-17-403.
Elective abortion.
Health insurance exchanges, abortion coverage prohibited, §23-79-156.
Electric delivery system.
Broadband over power lines enabling act, §23-18-801.
Electric utility.
Broadband over power lines enabling act, §23-18-801.
Electric utility storm recovery securitization financing, §23-18-902.

DEFINED TERMS —Cont'd
Electric utility —Cont'd
Renewable energy development, §23-18-603.
Electronic funds transfer.
Financial institutions, §23-32-210.
Electronic games of skill.
Horse racing and greyhound racing, §23-113-103.
Eligible employee.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Eligible employer.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Eligible individual.
Health insurance portability and accountability, §23-86-303.
Eligible telecommunications carrier, §23-17-403.
Lifeline individual verification effort corporation, §23-16-402.
Embedded investment.
Telecommunications regulatory reform, §23-17-403.
Emergency road service.
Automobile clubs or associations, §23-77-101.
Employee.
Fair mortgage lending act, §23-39-502.
Health insurance, franchise plan, §23-85-101.
Health insurance, group accident and health insurance, §23-86-106.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurance portability and accountability, §23-86-303.
Hospital and medical service corporations, §23-75-104.
Employee benefit stop-loss insurance.
Kinds of insurance, §23-62-111.
Employer.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurance portability and accountability, §23-86-303.
Employer contribution rule.
Health insurance portability and accountability, §23-86-303.
Employer service assurance organization.
Professional employer organizations, §23-92-402.

DEFINED TERMS —Cont'd
Energy conservation programs and measures.
Public utilities, §23-3-403.
Energy-efficient.
Utility facility environmental and economic protection, §23-18-503.
Energy resource declaration-of-need proceeding.
Utility facility environmental and economic protection, §23-18-503.
Engaged in transporting persons or property.
Railroads and express companies, §23-4-701.
Engaging in the business of buying, selling, or exchanging recreational vehicles.
Recreational vehicle franchise act, §23-112-1004.
Enrolled customer.
Portable electronics insurance, §23-88-501.
Enrollee.
Health maintenance organizations, §23-76-102.
Enrollment.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Enrollment date.
Health insurance portability and accountability, §23-86-303.
Entity.
Health insurance consumer protection, §23-99-403.
Health insurance coverage for mental illness, §23-99-503.
Entrance fee.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Equity capital.
Trust companies, §23-51-102.
Equity security.
Stock insurers, inside trading, §23-69-201.
Trust companies, §23-51-102.
ERISA.
Choice of health care providers by patients, enforcement of any willing provider laws, §23-99-802.
Escrow.
Title insurance, §23-103-402.
Escrow account.
Title insurance, §23-103-402.
Event.
Arkansas earthquake authority act, §23-102-103.

DEFINED TERMS —Cont'd
Evidence of coverage.
Health maintenance organizations, §23-76-102.
Excepted benefits.
Health insurance portability and accountability, §23-86-310.
Excess expenditures.
Gas utilities, §23-3-602.
Excess or stop loss coverage.
Comprehensive health insurance pool, §23-79-503.
Exempt commercial purchaser.
Surplus lines insurance, §23-65-304.
Exempt person.
Fair mortgage lending act, §23-39-502.
Exempt wholesale generator.
Public utilities, §23-1-101.
Existing law.
Banks, §23-45-106.
Exiting ILEC.
Telecommunications, §23-17-403.
Exogenous change.
Telecommunications, §23-17-407.
Experience period.
Insurance policies, §23-79-110.
Extended area service.
Telecommunications, §23-17-403.
Extension of credit.
Trust companies, §23-51-102.
Extension project.
Gas utilities, §23-3-602.
Extra-contractual claims.
Life and health insurance guaranty association, §23-96-104.
Eye and/or vision care benefits.
Primary eye care providers, §23-99-302.
Facilities.
Continuing care providers, §§23-93-103, 23-93-201.
Telecommunications regulatory reform, §23-17-403.
Factory branch.
Motor vehicle commission, §23-112-103.
Factory campaign.
Recreational vehicle franchise act, §23-112-1003.
Factory representative.
Motor vehicle commission, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
Fail-first.
Health insurance consumer protection, §23-99-420.

DEFINED TERMS —Cont'd
Failure to maintain complaint handling procedures.
Trade practices, §23-66-206.
Failure to maintain conflict of interest procedures.
Trade practices, §23-66-206.
Fair value.
Protected cell company act, §23-63-1703.
False information and advertising generally.
Trade practices, §23-66-206.
False statements and entries.
Trade practices, §23-66-206.
Family members.
Recreational vehicle franchise act, §23-112-1003.
Family or household member.
Private trust companies, §23-51-118.
Farm cooperative.
Securities, §23-42-102.
Farmer.
Mutual aid associations, §23-73-101.
FCC.
Telecommunications regulatory reform, §23-17-403.
Feasibility study.
Liability risk retention, §23-94-203.
Federal act.
Health insurance marketplace, §23-61-802.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Telecommunications regulatory reform, §23-17-403.
Federal agency.
Electric cooperative corporations, §23-18-302.
Rural telecommunications cooperatives, §23-17-202.
Federal association.
Regional savings and loan act, §23-37-802.
Savings and loan associations, §23-37-101.
Federal deposit insurance agency.
Bank dissolution and liquidation, §23-49-101.
Federal financial institutions regulatory agencies.
Banks, §23-45-102.
Federal governmental plan.
Health insurance portability and accountability, §23-86-303.
Federally eligible individual.
Comprehensive health insurance pool, §23-79-503.

DEFINED TERMS —Cont'd
Federally tax-qualified long term care insurance contract.
Long-term care insurance, §23-97-304.
Female-owned business.
Lotteries, §23-115-103.
Fictitious grouping.
Trade practices, §23-66-304.
Fiduciary record.
Trust companies, §23-51-102.
Fifth wheel travel trailer.
Recreational vehicle franchise act, §23-112-1003.
Final judgment.
Insurance company deposits, §23-63-909.
Financial institution.
Agency designation on certificates of deposit, §23-32-501.
Banks, §23-45-102.
Financial requirements.
Health insurance coverage for mental illness, §23-99-503.
Financial services.
Automobile clubs or associations, §23-77-101.
Financing costs.
Electric utility storm recovery securitization financing, §23-18-902.
Financing entity.
Life settlements, §23-81-802.
Financing order.
Electric utility storm recovery securitization financing, §23-18-902.
Financing party.
Electric utility storm recovery securitization financing, §23-18-902.
Financing statement.
Electric utility storm recovery securitization financing, §23-18-902.
Financing transaction.
Life settlements, §23-81-802.
Fiscal impact statement.
Lotteries, §23-115-103.
Fixed carrier common line revenue shortfall.
Telecommunications, §23-17-403.
Fixed ILEC retail billed minutes of use.
Telecommunications, §23-17-403.
Flipping.
Home loan protection act, §23-53-104.
Floor.
Insurance company investments, §23-63-841.

DEFINED TERMS —Cont'd
Folding camping trailer.
Recreational vehicle franchise act, §23-112-1003.
Foreign association.
Savings and loan associations, §23-37-101.
Foreign bank card.
Automatic teller machines, §§23-32-208, 23-48-810.
Foreign country.
Insurance company rehabilitation and liquidation, §23-68-102.
Foreign decree.
State insurance department, §23-61-111.
Foreign health organization.
Risked-based capital requirements, §23-63-1501.
Foreign insurer, §23-60-102.
Risk-based capital act, §23-63-1302.
Format.
Medicare supplement insurance minimum standards, §23-79-406.
Fortuitous events.
Insurance, §23-60-102.
Forward.
Insurance company investments, §23-63-841.
Franchise.
Motor vehicle commission, §23-112-103.
Video service act, §23-19-202.
Franchise entity.
Video service act, §23-19-202.
Franchise holder.
Wagering on electronic games of skill, §23-113-103.
Fraternal benefit society, §23-74-101.
Fraud.
Securities, §23-42-102.
Fraudulent insurance act, §23-66-501.
Fraudulent life settlement act, §23-81-802.
Freight forwarder.
Registration of motor carriers engaged in interstate commerce, §23-13-601.
Full service branches.
Banks, §23-48-701.
Full time.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Fully funded.
Protected cell company act, §23-63-1703.

DEFINED TERMS —Cont'd
Functional limit test.
Health insurance consumer protection, §23-99-417.
Funding agreement.
Kinds of insurance, §23-62-109.
Future.
Insurance company investments, §23-63-841.
Game of bingo, §23-114-102.
Gas.
Natural gas pipeline safety, §23-15-203.
Gastric pacemaker.
Health insurance consumer protection, §23-99-419.
Gastroparesis.
Health insurance consumer protection, §23-99-419.
Gas utility, §23-3-602.
Gatekeeper.
Primary eye care provider act, §23-99-302.
Gatekeeper system.
Choice of health care providers by patients, §23-99-203.
Primary eye care provider act, §23-99-302.
General account.
Protected cell company act, §23-63-1703.
General assets.
Insurance company rehabilitation and liquidation, §23-68-102.
Generation and transmission cooperatives, §23-4-1101.
Genetic information.
Genetic nondiscrimination in insurance act, §23-66-320.
Genetic test.
Genetic nondiscrimination in insurance act, §23-66-320.
Gift.
Lotteries, §23-115-103.
Good faith.
Motor vehicle commission, §23-112-103.
Governing body.
Video service act, §23-19-202.
Governmental plan.
Comprehensive health insurance pool, §23-79-503.
Health insurance portability and accountability, §23-86-303.
Government entity.
Telecommunications regulatory reform, §23-17-403.

DEFINED TERMS —Cont'd
Government money market mutual fund.
Domestic stock and mutual insurers, §23-69-134.
Gross advance amount.
Structured settlement protection act, §23-81-702.
Gross earnings.
Public utilities, §23-1-101.
Gross receipts.
Charitable bingo and raffles enabling act, §23-114-102.
Gross revenue.
Video service provider fee, §23-19-206.
Group accident and health insurance, §23-86-106.
Group health insurance coverage.
Health insurance portability and accountability, §23-86-303.
Group health plan.
Comprehensive health insurance pool, §23-79-503.
Health insurance portability and accountability, §23-86-303.
Group long-term care insurance, §23-97-304.
Group participation rule.
Health insurance portability and accountability, §23-86-303.
Guaranteed.
Securities, §23-42-102.
Guide.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Hazardous conditions.
Trust companies, §23-51-102.
Hazardous financial condition.
Continuing care providers, §23-93-203.
Hazardously financially.
Insurance company rehabilitation and liquidation, §23-68-102.
Health benefit plan.
Any willing provider law, enforcement, §23-99-802.
Choice of health care providers by patients, §23-99-203.
Craniofacial anomaly corrective surgery insurance coverage, §23-79-1501.
Dental procedures, coverage of anesthesia and hospitalization for, §23-86-121.
Freedom of choice among health benefit plans, §23-86-406.
Health insurance, small employer health insurance purchasing groups, §23-86-502.

DEFINED TERMS —Cont'd
Health benefit plan —Cont'd
Health insurance consumer choice, §23-79-802.
Health insurance consumer protection, §§23-99-403, 23-99-420.
Health insurance coverage for mental illness, §23-99-503.
Health insurance marketplace, §23-61-802.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Hearing aids, health insurance coverage, §23-79-1401.
Prescription drug card uniformity, §23-80-402.
Primary eye care providers, §23-99-302.
Prostate cancer, health insurance coverage, §23-79-1302.
Small employer health insurance, §23-86-202.
Therapy services, coverage, §23-79-157.
Health benefit policy.
Equity in prescription insurance and contraceptive coverage, §23-79-1102.
Health care insurer.
Any willing provider law, enforcement, §23-99-802.
Choice of health care providers by patients, §23-99-203.
Diabetes coverage, §23-79-601.
Health insurance consumer protection, §§23-99-403, 23-99-420.
Health insurance coverage for mental illness, §23-99-503.
Primary eye care provider act, §23-99-302.
Recoupment from medical providers, §23-63-1801.
Therapy services, coverage, §23-79-157.
Health care plan.
Health maintenance organizations, §23-76-102.
Insurance, temporomandibular joint disorder and craniomandibular disorder coverage, §23-79-150.
Health care policy.
Colorectal cancer prevention and treatment, §23-79-1201.
Health care provider.
Any willing provider law, enforcement, §23-99-802.
DEFINED TERMS —Cont'd
Health care provider —Cont'd
Choice of health care providers by patients, §23-99-203.
Freedom of choice among health benefit plans, §23-86-406.
Health insurance consumer protection, §23-99-420.
Recoupment from medical providers, §23-63-1801.
Health care services.
Choice of health care providers by patients, §23-99-203.
Dental point of service option, §23-99-603.
Grievance and quality assessment and improvement systems, §23-99-702.
Health insurance consumer protection, §23-99-420.
Health maintenance organizations, §23-76-102.
Tax credits for medically necessary foods, §23-79-701.
Health care sharing ministry.
Insurance code, §23-60-104.
Health carrier.
Dental point of service option, §23-99-603.
Drug enforcement administration registry number protection, §23-66-702.
Experimental and investigational surgical products and medical devices, group and blanket health insurance, §23-86-122.
Grievance and quality assessment and improvement systems, §23-99-702.
Insurance, temporomandibular joint disorder and craniomandibular disorder coverage, §23-79-150.
Late payment of claims by health carriers, §23-66-215.
Health insurance.
Comprehensive health insurance pool, §23-79-503.
Health insurance marketplace, §23-61-802.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Health insurance contract.
Late payment of claims by health carriers, §23-66-215.
Health insurance coverage.
Health insurance, §23-79-153.
Health insurance portability and accountability, §23-86-303.

DEFINED TERMS —Cont'd
Health insurance coverage —Cont'd
Recoupment from medical providers, §23-63-1801.
Health insurance issuer.
Health insurance portability and accountability, §23-86-303.
Health insurance marketplace.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Health insurance policy.
Diabetes coverage, §23-79-601.
Health insurance purchasing group.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurance purchasing group health carrier.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurer.
Any willing provider law, enforcement, §23-99-802.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurance marketplace, §23-61-802.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Health maintenance organization, §23-76-102.
Comprehensive health insurance pool, §23-79-503.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurance portability and accountability, §23-86-303.
Health organization.
Risked-based capital requirements, §23-63-1501.
Health plan.
Dental point of service option, §23-99-603.
Tax credits for medically necessary foods, §23-79-701.
Health professional.
Health maintenance organizations, §23-76-102.
Health status-related factor.
Health insurance portability and accountability, §23-86-303.
Healthy bank, §23-48-701.

DEFINED TERMS —Cont'd
Hearing aid.
Health insurance coverage, §23-79-1401.
Hedging transaction.
Insurance company investments, §23-63-841.
High-cost home loan.
Home loan protection act, §23-53-103.
Highway.
Motor carriers, §23-13-203.
Home service system of distribution.
Insurance trade practices, §23-66-402.
Home state.
Banks, §23-45-102.
Insurance producer licensing, §23-64-502.
Surplus lines insurance, §23-65-304.
Home state regulator.
Banks, §23-45-102.
Hospital.
Comprehensive health insurance pool, §23-79-503.
Hospital and medical service corporations, §23-75-101.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Host state.
Banks, §23-45-102.
Household goods carrier.
Motor carriers, §23-13-203.
ILEC Arkansas calling plan fund and extension of telecommunications facilities fund expense, §23-17-403.
ILEC intrastate carrier common line revenue requirement, §23-17-403.
Immediate family.
Lotteries, §23-115-103.
Impaired capital.
Banks, §23-48-312.
Impaired insurer.
Life and health insurance guarantee association, §23-96-104.
Impaired or impairment.
Insurance company rehabilitation and liquidation, §23-68-102.
Income.
Insurance company investments, §23-63-841.
Income generation transaction.
Insurance company investments, §23-63-841.
Incompetence.
Lotteries, §23-115-103.
Incumbent local exchange carrier.
Telecommunications regulatory reform, §23-17-403.

DEFINED TERMS —Cont'd
Incumbent video service provider.
Video service act, §23-19-202.
Indebtedness.
Credit life and disability insurance, §23-87-103.
Indemnity agreement.
Title insurance, §23-103-402.
Indemnity trigger.
Protected cell company act, §23-63-1703.
Independent professional advice.
Structured settlement protection act, §23-81-702.
Independent qualified real estate appraiser.
Credit unions, §23-35-603.
Index rate.
Small employer health insurance, §23-86-202.
Individual health insurance coverage.
Comprehensive health insurance pool, §23-79-503.
Individual markets.
Health insurance portability and accountability, §23-86-303.
Industrial insured.
Captive insurance companies, §23-63-1601.
Industrial insured captive insurance company, §23-63-1601.
Industrial insured group.
Captive insurance companies, §23-63-1601.
Industrial loan institutions, §23-36-101.
Informational advertising.
Public utility rates and charges, §23-4-207.
Inherited metabolic disease.
Tax credits for medically necessary foods, §23-79-701.
Insider.
Trust companies, §23-51-102.
Insolvency.
Insurance company rehabilitation and liquidation, §23-68-102.
Insolvent.
Trust companies, §23-51-102.
Insolvent institution.
Bank dissolution and liquidation, §23-49-101.
Insolvent insurer.
Life and health insurance guaranty association, §23-96-104.
Property and casualty insurance guaranty, §23-90-103.

DEFINED TERMS —Cont'd
Institution.
Bank dissolution and liquidation, §23-49-101.
Banks, §23-48-105.
Insurance company investments, §23-63-805.
Insurable interest.
Personal insurance, §23-79-103.
Property, §23-79-104.
Insurance, §23-60-102.
Consumer protection, §23-66-603.
Fraudulent insurance acts, §23-66-501.
Liability risk retention, §23-94-203.
Producer licensing, §23-64-502.
Insurance consultant, §23-64-102.
Insurance contract.
Trade practices, §23-66-203.
Insurance holding company system, §23-63-503.
Insurance information.
Insurance sales consumer protection, §23-66-603.
Insurance policy.
Cancer prescription medication, §23-79-147.
Prescription drug benefits, §23-79-149.
Property insurance, §23-88-203.
Trade practices, §23-66-203.
Insurance producer, §§23-64-232, 23-64-502.
Insurance service.
Automobile clubs or associations, §23-77-101.
Insurance tracking.
Creditor-placed insurance, §23-101-103.
Insured.
Life settlements, §23-81-802.
Minimum basic benefit policies, §23-98-102.
Insured customer.
Self-service storage insurance, §23-64-233.
Insurer, §23-60-102.
Arkansas earthquake authority act, §23-102-103.
Business transacted with producer controlled property and casualty insurer, §23-63-1102.
Comprehensive health insurance pool, §23-79-503.
Creditor-placed insurance, §23-101-103.
Dental claim based on medical necessity, denial, §23-79-158.
Dentists, agreements with insurers setting fees for noncovered services, §23-63-115.

DEFINED TERMS —Cont'd
Insurer —Cont'd
Equity in prescription insurance and contraceptive coverage, §23-79-1102.
Fraudulent insurance acts, §23-66-501.
Genetic nondiscrimination in insurance act, §23-66-320.
Health insurance consumer protection, §23-99-403.
Holding company regulation, §§23-63-503, 23-63-528.
Insurance producers, §§23-64-232, 23-64-502.
Investment authority, §23-63-825.
Managing general agents, §23-64-402.
Minimum basic benefit policies, §23-98-102.
Professional liability insurance, §23-91-203.
Property and casualty insurance guaranty, §23-90-103.
Rehabilitation and liquidation, §23-68-102.
Reinsurance intermediaries, §23-62-402.
Rural risk underwriting, §23-88-302.
Simplification of insurance policies, §23-80-203.
Interconnected VoIP service.
Telecommunications regulatory reform, §23-17-403.
Interested parties.
Motor carriers, §23-13-203.
Structured settlement protection act, §23-81-702.
Interexchange carriers.
Universal telephone service, §23-17-303.
Interexchange communication services.
Universal telephone service, §23-17-303.
Intermediate stock holding company.
Mutual insurance holding companies, §23-69-303.
Interstate access charge pools.
Telecommunications regulatory reform, §23-17-403.
Interstate merger transactions.
Bank mergers, conversions or other corporate actions, §23-48-501.
Banks, §23-45-102.
Interstate transmission facilities.
Natural gas pipeline safety, §23-15-203.

DEFINED TERMS —Cont'd
Intoxicated.
Amusement ride operators, §23-89-511.
Investment advisers act of 1940, §23-42-102.
Investment advisor.
Securities, §23-42-102.
Investment company act of 1940, §23-42-102.
Investment securities.
Trust companies, §23-51-102.
Investor companies.
Foreign investor companies, §23-32-401.
Involved insurer.
Insurance holding company regulation, §23-63-525.
Irregular route.
Motor carriers, §23-13-203.
Issuer.
Medicare supplement insurance minimum standards, §23-79-403.
Public utilities.
Merger or acquisition of control, §23-3-302.
Securities, §23-42-102.
Laboratory and pathological tests.
Health insurance, outpatient coverage, §23-85-133.
Land.
Light, heat and power utilities, §23-18-528.
Lapse.
Creditor-placed insurance, §23-101-103.
Large employer.
Health insurance portability and accountability, §23-86-303.
Large group.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Large-group market.
Health insurance portability and accountability, §23-86-303.
Late enrollee.
Health insurance portability and accountability, §23-86-303.
Law.
Fraternal benefit society, §23-74-104.
Lease.
Motor carriers, §23-13-203.
Leasing company.
Registration of motor carriers engaged in interstate commerce, §23-13-601.
Legal insurance.
Professional liability insurance, §23-91-203.

DEFINED TERMS —Cont'd
Legal service.
Automobile clubs or associations, §23-77-101.
Liability.
Liability risk retention, §23-94-203.
License.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Insurance producers, §23-64-502.
Lotteries, §23-115-103.
Motor carriers, §23-13-203.
Trust companies, §23-51-102.
Licensed authorized organization.
Charitable bingo and raffles enabling act, §23-114-102.
Licensed insurer.
Business transacted with producer controlled property and casualty insurer, §23-63-1102.
Insurance antifraud assessment, §23-100-104.
Licensed location.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Licensed physical therapist, occupational therapist or speech-language pathologist.
Therapy services, coverage, §23-79-157.
Licensed primary care physician or osteopath.
Therapy services, coverage, §23-79-157.
Licensed producer.
Reinsurance intermediaries, §23-62-402.
Licensee.
Fair mortgage lending act, §23-39-502.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Money services, §23-55-102.
Prepaid funeral services, §23-40-103.
Professional employer organizations, §23-92-402.
Life care.
Continuing care providers, §23-93-201.
Life expectancy.
Life settlements, §23-81-802.
Life insurance, §23-62-102.
Life insurance producer.
Life settlements, §23-81-802.
Lifeline assistance program.
Lifeline individual verification effort corporation, §23-16-402.

DEFINED TERMS —Cont'd
Life or accident and health insurer.
Risk-based capital act, §23-63-1302.
Life settlement contract, §23-81-802.
Limited dual interest insurance.
Creditor-placed insurance, §23-101-103.
Limited license.
Insurance, §23-64-202.
Limited licensee.
Self-service storage insurance, §23-64-233.
Limited line credit insurance.
Insurance producers, §23-64-502.
Limited line credit insurance producer, §23-64-502.
Limited lines insurance.
Insurance producers, §23-64-502.
Limited lines producer, §23-64-502.
Limited lines travel insurance producer.
Insurance, §23-64-202.
Limited network plan.
Freedom of choice among health benefit plans, §23-86-406.
Line-make.
Recreational vehicle franchise act, §23-112-1003.
Line make of a motor home.
Motor vehicle commission, §23-112-103.
Line make of a motor vehicle.
Motor vehicle commission, §23-112-103.
Link Up America.
Lifeline individual verification effort corporation, §23-16-402.
Liquid investments.
Prepaid funeral benefits, §23-40-103.
Living unit.
Continuing care providers, §§23-93-103, 23-93-201.
Loan broker.
Prohibition of advance fee loan brokerage, §23-39-401.
Loan officer.
Fair mortgage lending act, §23-39-502.
Loans and extensions of credit.
Trust companies, §23-51-102.
Lobbying.
Lotteries, §23-115-103.
Local exchange area.
Telecommunications regulatory reform, §23-17-403.
Local exchange carrier.
Telecommunications regulatory reform, §23-17-403.

DEFINED TERMS —Cont'd
Local exchange carrier —Cont'd
Universal telephone service, §23-17-303.
Local government.
Lotteries, §23-115-103.
Local switching support.
Telecommunications regulatory reform, §23-17-403.
Location.
Portable electronics insurance, §23-88-501.
Lodge.
Fraternal benefit societies, §23-74-104.
Long-term care insurance, §23-97-304.
Loss development.
Rates and rating organizations, §23-67-202.
Loss or impairment of speech or hearing.
Insurance policies, §23-79-130.
Loss ratio.
Creditor-placed insurance, §23-101-103.
Insurance.
Minimum basic benefit policies, §23-98-102.
Insurance policies, §23-79-110.
Loss trending.
Rates and rating organizations, §23-67-202.
Lottery, §23-115-103.
Lottery proceeds, §23-115-103.
Lower grade obligations.
Insurance company investments, §23-63-805.
Low protein modified food product.
Tax credits for medically necessary foods, §23-79-701.
Low speed vehicle.
Motor vehicle commission, §23-112-103.
Main banking office.
Banks, §23-45-102.
Main office.
Banks, §23-45-102.
Securities, §23-42-102.
Major procurement contract.
Lotteries, §23-115-103.
Major utility facility.
Environmental and economic protection, §23-18-503.
Make a mortgage loan.
Fair mortgage lending act, §23-39-502.
Mammography.
Insurance policies, §23-79-140.

DEFINED TERMS —Cont'd
Managed care plan.
Grievance and quality assessment and improvement systems, §23-99-702.
Health insurance consumer protection, §23-99-403.
Managing general agent.
Insurance, §23-64-402.
Managing principal.
Fair mortgage lending act, §23-39-502.
Mandatory control level event.
Risked-based capital requirements for health organizations, §23-63-1506.
Mandatory control level RBC.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Manufacturer.
Charitable bingo and raffles enabling act, §23-114-102.
Motor vehicle commission, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
MAP.
Arkansas earthquake authority act, §23-102-103.
Map service.
Automobile clubs or associations, §23-77-101.
Market.
Insurance holding company regulation, §23-63-528.
Market share.
Insurance holding company regulation, §23-63-526.
Market value.
Credit unions, §23-35-603.
Material litigation.
Money services licenses, §23-55-202.
Medicaid.
Health insurance consumer protection, §23-99-420.
Medical assistance.
Comprehensive health insurance pool, §23-79-503.
Medical care.
Health insurance portability and accountability, §23-86-303.
Medical food.
Tax credits for medically necessary foods, §23-79-701.
Medical literature.
Insurance coverage for cancer prescription medication, §23-79-147.
Medically necessary.
Comprehensive health insurance pool, §23-79-503.

DEFINED TERMS —Cont'd
Medical necessity.
Health insurance coverage for mental illness, §23-99-507.
Medical service corporations, §23-75-101.
Medicare.
Comprehensive health insurance pool, §23-79-503.
Medicare supplement policy.
Insurance policies, §23-79-403.
Medium grade obligations.
Insurance company investments, §23-63-805.
Member.
Electric cooperative corporations, §23-18-302.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Rural telecommunications cooperatives, §23-17-202.
Member-consumers.
Rural electric distribution cooperatives, §23-4-901.
Member cooperative.
Generation and transmission cooperatives, §23-4-1101.
Member insurer.
Life and health insurance guarantee association, §23-96-104.
Member of a minority.
Lotteries, §23-115-103.
Member organization.
Captive insurance companies, §23-63-1601.
Mental illness.
Health insurance coverage for mental illness, §23-99-503.
Merchant generator.
Utility facility environmental and economic protection, §23-18-503.
Merchant transmission provider.
Utility facility environmental and economic protection, §23-18-503.
Mergers.
Bank mergers, conversions or other corporate actions, §23-48-501.
Merging banks, §23-45-102.
Minimum basic benefit policy.
Insurance, §23-98-102.
Minority-owned business.
Lotteries, §23-115-103.
Misrepresentation and false advertising of insurance policies, §23-66-206.
Monetary value.
Money services, §23-55-102.

DEFINED TERMS —Cont'd
Money.
Money services, §23-55-102.
Money market mutual fund.
Domestic stock and mutual insurers, §23-69-134.
Money services, §23-55-102.
Money transmission.
Money services, §23-55-102.
Moody's corporate bond yield average.
Life and health insurance guarantee association, §23-96-104.
Mortgage banker.
Fair mortgage lending act, §23-39-502.
Mortgage broker.
Fair mortgage lending act, §23-39-502.
Mortgage guaranty insurance.
Kinds of insurance, §23-62-110.
Mortgage loan.
Fair mortgage lending act, §23-39-502.
Mortgage servicer.
Fair mortgage lending act, §23-39-502.
Motor carrier, §23-13-203.
Registration of motor carriers engaged in interstate commerce, §23-13-601.
Motor club service.
Automobile clubs or associations, §23-77-101.
Motorcycle owners' organization.
Special motorcycle events, §23-112-802.
Motor home.
Recreational vehicle franchise act, §23-112-1003.
Motor private carrier.
Registration of motor carriers engaged in interstate commerce, §23-13-601.
Motor vehicle, §23-13-203.
Motor carriers, §23-13-235.
Complaint proceedings, §23-13-301.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Motor vehicle commission, §23-112-103.
Motor vehicle dealer.
Motor vehicle commission, §23-112-103.
Motor vehicle event data recorders, §23-112-107.
Motor vehicle lessor.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Motor vehicle salesperson.
Motor vehicle commission, §23-112-103.
Multidraw screen-based lottery game, §23-115-103.
Multiple-party deposit accounts.
Banks, §23-47-204.
Multistate or multisovereign lottery.
Lotteries, §23-115-103.
Municipality.
Natural gas pipeline safety, §23-15-203.
Public utilities, §23-1-101.
Rural telecommunications cooperatives, §23-17-202.
Utility facility environmental and economic protection, §23-18-503.
Mutual association.
Savings and loan associations, §23-37-101.
Mutual fund.
Domestic stock and mutual insurers, §23-69-134.
Mutual insurance holding company, §23-69-303.
NAIC.
Fraudulent insurance acts, §23-66-501.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
National bank, §23-45-102.
National comprehensive cancer network.
Prostate cancer, health insurance coverage, §23-79-1302.
National Exchange Carrier Association, Inc..
Telecommunications regulatory reform, §23-17-403.
National interest electric transmission corridor.
Utility facility environmental and economic protection, §23-18-503.
National trust company.
Banks, §23-45-102.
Natural gas pipeline transporter, owner, or operator, §23-15-214.
Navigable water crossing, §23-3-501.
Navigable waterway, §23-3-501.
Navigator.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
NECA.
Telecommunications regulatory reform, §23-17-403.

DEFINED TERMS —Cont'd
Negative trend.
Risk-based capital act, §23-63-1302.
Negotiate.
Insurance producers, §23-64-502.
Net advance amount.
Structured settlement protection act, §23-81-702.
Net book value.
Valuation of utility property for ratemaking purposes, §23-4-111.
Net death benefit.
Life settlements, §23-81-802.
Net debt.
Creditor-placed insurance, §23-101-103.
Net direct written premiums.
Arkansas earthquake authority act, §23-102-103.
Property and casualty insurance guarantee, §23-90-103.
Rural risk underwriting, §23-88-302.
Net excess generation.
Renewable energy development, §23-18-603.
Net investment income.
Prepaid funeral benefits, §23-40-103.
Net metering.
Renewable energy development, §23-18-603.
Net-metering customer.
Renewable energy development, §23-18-603.
Net metering facility.
Renewable energy development, §23-18-603.
Net proceeds.
Lotteries, §23-115-103.
Net recoverable assets.
Credit unions.
Dividends, §23-35-607.
Net wagering revenues from electronic games of skills.
Horse racing and greyhound racing, §23-113-103.
Network.
Grievance and quality assessment and improvement systems, §23-99-702.
Network element.
Telecommunications regulatory reform, §23-17-403.
Network plan.
Health insurance portability and accountability, §23-86-303.
Net worth.
Prepaid funeral benefits, §23-40-103.
New business premium rate.
Small employer health insurance, §23-86-202.

DEFINED TERMS —Cont'd
New motor vehicle.
Motor vehicle commission, §23-112-103.
New trust office.
Trust companies, §23-51-102.
Nonadmitted insurance.
Surplus lines insurance, §23-65-304.
Noncompetitive market.
Rates and rating organizations, §23-67-202.
Noncovered service.
Dentists, agreements with insurers setting fees for noncovered services, §23-63-115.
Nondestructive testing.
Amusement ride and amusement attraction safety insurance, §23-89-502.
Nonfederal governmental plan.
Health insurance portability and accountability, §23-86-303.
Nonincumbent video service provider.
Video service act, §23-19-202.
Nonindemnity trigger.
Protected cell company act, §23-63-1703.
Noninsurer.
Any willing provider law, enforcement, §23-99-802.
Nonissuer.
Securities, §23-42-102.
Nonlottery state educational resources.
Lotteries, §23-115-103.
Non-navigator.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Nonpayment of premium.
Casualty insurance, §23-89-301.
Nonprofit entity.
Recreational vehicle special events, §23-112-902.
Special motorcycle events, §23-112-802.
Nonprofit sponsor.
Railroads.
Special passenger excursion trains, §23-10-213.
Nonregulated broadband services.
Broadband over power lines enabling act, §23-18-801.
Nonrenewable energy sources.
Utility facility environmental and economic protection, §23-18-503.

DEFINED TERMS —Cont'd
Nonrenewable energy technology.
Utility facility environmental and economic protection, §23-18-503.
Nonresidential mortgage loan, §23-32-502.
Nonspecified prepaid contract.
Prepaid funeral benefits, §23-40-103.
Nursing care.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Obligations.
Electric cooperative corporations, §23-18-302.
Rural telecommunications cooperatives, §23-17-202.
Occasional.
Motor carriers, §23-13-203.
Offer.
Securities, §23-42-102.
Offer and disseminate.
Insurance, §23-64-202.
Offer to sell.
Securities, §23-42-102.
Office.
Bank commissioner emergency powers, §23-46-212.
Trust companies, §23-51-102.
Officer.
Bank commissioner emergency powers, §23-46-212.
Trust companies, §23-51-102.
Officers of this state, legislative, executive or judicial.
Railroads and transportation companies.
Passes and free transportation, §23-4-801.
Off premises.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
On-duty time.
Safe transportation of railroad employees by contract carriers, §23-16-502.
Operating expense.
Lotteries, §23-115-103.
Operating subsidiary.
Fair mortgage lending act, §23-32-502.
Trust companies, §23-51-102.
Option.
Insurance company investments, §23-63-841.
Order.
Banks, §23-45-102.

DEFINED TERMS —Cont'd
Original costs.
Valuation of utility property for ratemaking purposes, §23-4-111.
Orthotic device.
Health insurance consumer protection, §23-99-403.
Orthotic service.
Health insurance consumer protection, §23-99-403.
Other carriers.
Rail carriers, §23-16-101.
Out-of-state bank, §23-45-102.
Trust companies, §23-51-102.
Out-of-state state-chartered bank, §23-45-102.
Out-of-state trust company, §23-51-102.
Out-of-state trust institution, §23-51-102.
Outstanding.
Money services, §23-55-102.
Overcharges.
Air commerce, §23-14-102.
Over-the-counter derivative instrument.
Insurance company investments, §23-63-841.
Owner.
Amusement ride and amusement attraction safety insurance, §23-89-502.
Life and health insurance guaranty association, §23-96-104.
Life settlements, §23-81-802.
Motor vehicle event data recorders, §23-112-107.
Self-service storage insurance, §23-64-233.
Parent.
Captive insurance companies, §23-63-1601.
Partial hospitalization.
Health insurance, group, mental health coverage, §23-86-113.
Participant.
Captive insurance companies, §23-63-1601.
Health insurance portability and accountability, §23-86-303.
Participant contract.
Captive insurance companies, §23-63-1601.
Participating provider.
Health insurance consumer protection, §23-99-403.
Health maintenance organizations, §§23-76-118, 23-76-119.

DEFINED TERMS —Cont'd
Parties.
Agency designation on certificates of deposit, §23-32-501.
Certificates of deposit, §23-47-301.
Patient identifying information.
Life settlements, §23-81-802.
Payee.
Structured settlement protection act, §23-81-702.
Payment instrument.
Money services, §23-55-102.
Payment of covered claims.
Property and casualty insurance guaranty, §23-90-103.
Payments.
Agency designation on certificates of deposit, §23-32-501.
Certificates of deposit, §23-47-301.
PEG channels.
Regulation of video services, §23-19-209.
Periodic payments.
Structured settlement protection act, §23-81-702.
Periodic physical examinations.
Insurance.
Minimum basic benefit policies, §23-98-102.
Insurance policies.
Children's preventive health care, §23-79-141.
Permit.
Motor carriers, §23-13-203.
Permitted coverages.
Insurance.
Minimum basic benefit policies, §23-98-102.
Permittee.
Prepaid funeral services, §23-40-103.
Person.
Agency designation on certificates of deposit, §23-32-501.
Air commerce, §23-14-102.
Banks, §23-45-102.
Charitable bingo and raffles enabling act, §23-114-102.
Commodities futures, §23-44-101.
Electric cooperative corporations, §23-18-302.
Fair mortgage lending act, §23-39-502.
Health insurance consumer protection, §23-99-403.
Health insurance coverage for mental illness, §23-99-503.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.

DEFINED TERMS —Cont'd
Person —Cont'd
Health maintenance organizations, §23-76-102.
Insurance, §23-60-102.
Fraudulent insurance acts, §23-66-501.
Insurance holding company regulation, §§23-63-503, 23-63-506.
Insurance producers, §23-64-502.
Insurance sales consumer protection, §23-66-603.
Life and health insurance guarantee association, §23-96-104.
Life settlements, §23-81-802.
Lotteries, §23-115-103.
Money services, §23-55-102.
Motor carriers, §23-13-203.
Complaint proceedings, §23-13-301.
Motor vehicle commission, §23-112-103.
Natural gas pipeline safety, §23-15-203.
Professional employer organizations, §23-92-402.
Property and casualty insurance guarantee, §23-90-103.
Property insurance.
Rural risk underwriting, §23-88-302.
Public utilities, §23-1-101.
Merger or acquisition of control, §23-3-302.
Recreational vehicle franchise act, §23-112-1003.
Rural telecommunications cooperatives, §23-17-202.
Securities, §23-42-102.
Title insurance, §23-103-402.
Trade practices, §23-66-203.
Trust companies, §23-51-102.
Used motor vehicle buyer protection, §23-112-602.
Utility facility environmental and economic protection, §23-18-503.
Wagering on electronic games of skill, §23-113-103.
Personal care services.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Personal insurance.
Use of credit information in personal insurance act, §23-67-404.
Personal property.
Self-service storage insurance, §23-64-233.
Personal representative.
Agency designation on certificates of deposit, §23-32-501.

DEFINED TERMS —Cont'd
Personal representative —Cont'd
Certificates of deposit, §23-47-301.
Personal risk liability.
Liability risk retention, §23-94-203.
Personal risks.
Rates and rating organizations, §23-67-202.
Persons at high risk for colorectal cancer.
Colorectal cancer prevention and treatment, §23-79-1201.
Petroleum refinery.
Natural gas pipeline safety, §23-15-203.
Physician.
Comprehensive health insurance pool, §23-79-503.
Pipeline facilities.
Natural gas pipeline safety, §23-15-203.
Placement.
Health insurance portability and accountability, §23-86-303.
Plan.
Comprehensive health insurance pool, §23-79-503.
Plan administrator.
Comprehensive health insurance pool, §23-79-503.
Plan of operation.
Comprehensive health insurance pool, §23-79-503.
Liability risk retention, §23-94-203.
Plan sponsor.
Health insurance portability and accountability, §23-86-303.
Life and health insurance guaranty association, §23-96-104.
Point-of-sale terminals.
Automatic teller machines, §23-48-801.
Point-of-service.
Health maintenance organizations, §23-76-109.
Point of service plan.
Freedom of choice among health benefit plans, §23-86-406.
Points and fees.
Home loan protection act, §23-53-103.
Pole attachment, §23-4-1001.
Policy.
Casualty insurance, §23-89-301.
Fraudulent insurance acts, §23-66-501.
Genetic nondiscrimination in insurance act, §23-66-320.
Insurance policies, §23-79-101.
Life insurance policies and annuities, §23-81-109.

DEFINED TERMS —Cont'd
Policy —Cont'd
Life settlements, §23-81-802.
Long-term care insurance, §23-97-304.
Property and casualty insurance, §23-80-303.
Simplification of insurance policies, §23-80-203.
Policy cancellations.
Trade practices, §23-66-206.
Policy form.
Insurance policies.
Property and casualty insurance, §23-80-303.
Medicare supplement insurance minimum standards, §23-79-403.
Simplification of life and health insurance policy language, §23-80-203.
Policyholder.
Health insurance consumer protection, §23-99-403.
Life insurance policies and annuities, §23-81-109.
Policy loan.
Life insurance policies and annuities, §23-81-109.
Policy owner.
Life and health insurance guaranty association, §23-96-104.
Political advertising.
Public utilities.
Rates and charges, §23-4-207.
Political subdivisions.
Video service act, §23-19-202.
Pool.
Rates and rating organizations, §23-67-202.
Portable electronics.
Property insurance, §23-88-501.
Portable electronics insurance, §23-88-501.
Portable electronics transaction.
Property insurance, §23-88-501.
Potential exposure.
Insurance company investments, §23-63-841.
Prearrangement.
Prepaid funeral services, §23-40-103.
Predecessor financial institution.
Banks, §23-45-102.
Preexisting condition.
Long-term care insurance, §23-97-308.
Preexisting condition exclusion.
Health insurance portability and accountability, §23-86-303.
Preferred claim.
Insurance company rehabilitation and liquidation, §23-68-102.

DEFINED TERMS —Cont'd
Preferred dividend requirement.
Insurance company investments, §23-63-815.
Premature death.
Prostate cancer, health insurance coverage, §23-79-1302.
Premises.
Charitable bingo and raffles enabling act, §23-114-102.
Premium finance loan.
Life settlements, §23-81-802.
Premium rates applicable to individually underwritten standard risks.
Health insurance, group, conversion policies, §23-86-115.
Premiums.
Fraternal benefit societies, §23-74-104.
Insurance policies, §23-79-101.
Life and health insurance guarantee association, §23-96-104.
Premium tax.
Surplus lines insurance, §23-65-304.
Prepaid access.
Money services, §23-55-102.
Prepaid contract.
Funeral benefits, §23-40-103.
Prepaid funeral benefits contract, §23-40-103.
Prepaid wireless telephone service.
Surcharges to provide telecommunications for deaf and hearing impaired, §23-17-119.
Price amendment.
Securities registration by coordination, §23-42-402.
Primary business office.
Charitable bingo and raffles enabling act, §23-114-102.
Primary eye care provider, §23-99-302.
Principal.
Loan brokers.
Prohibition of advance fee loan brokerage, §23-39-401.
Principal office.
Trust companies, §23-51-102.
Principal place of business.
Fair mortgage lending act, §23-39-502.
Life and health insurance guaranty association, §23-96-104.
Regional savings and loan act, §23-37-802.
Principal shareholder.
Trust companies, §23-51-102.
Principal stockholder.
Dog racing, §23-111-402.

DEFINED TERMS —Cont'd
Prior authorization.
Health insurance consumer protection, §23-99-420.
Private carrier.
Motor carriers, §23-13-203.
Private review agent.
Health insurance consumer protection, §23-99-420.
Private trust company, §23-51-102.
Prize.
Lotteries, withholding from prizes, §23-115-1002.
Prize promotion.
Lotteries, §23-115-103.
Probationary status.
Insurance adjuster, agents and brokers, §23-64-216.
Producer.
Business transacted with producer controlled property and casualty insurer, §23-63-1102.
Creditor-placed insurance, §23-101-103.
Producer reinsurance captive insurance company, §23-63-1601.
Production facilities.
Natural gas pipeline safety, §23-15-203.
Production progress.
Natural gas pipeline safety, §23-15-203.
Product liability.
Liability risk retention, §23-94-203.
Professional employer agreement, §23-92-402.
Professional employer organization, §23-92-402.
Professional employer organization group, §23-92-402.
Professional employer organization service organization affidavit, §23-92-402.
Professional employer services, §23-92-402.
Promotional advertising.
Public utilities.
Rates and charges, §23-4-207.
Property damage.
Casualty insurance, §23-89-404.
Property insurance, §23-62-104.
Property or casualty insurer.
Risk-based capital act, §23-63-1302.
Proprietary part.
Recreational vehicle franchise act, §23-112-1003.
Prosthetic device.
Health insurance consumer protection, §23-99-403.

DEFINED TERMS —Cont'd
Prosthetic service.
Health insurance consumer protection, §23-99-403.
Protected cell, §23-63-1703.
Captive insurance companies, §23-63-1601.
Protected cell account, §23-63-1703.
Protected cell assets, §23-63-1703.
Protected cell company, §23-63-1703.
Protected cell company insurance securitization, §23-63-1703.
Protected cell liabilities, §23-63-1703.
Provider.
Any willing provider law, enforcement, §23-99-802.
Comprehensive health insurance pool, §23-79-503.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Health maintenance organizations, §23-76-102.
Life settlements, §23-81-802.
Tax credits for medically necessary foods, §23-79-701.
Provider network.
Video service provider fee, §23-19-206.
Public, education and government access channels.
Regulation of video services, §23-19-209.
Public official.
Lotteries, §23-115-103.
Public rights-of-way.
Video service act, §23-19-202.
Public service facility.
Navigable water crossings, §23-3-501.
Public utility, §23-1-101.
Environmental and economic protection, §23-18-503.
Pole attachment, §23-4-1001.
Valuation of property for ratemaking purposes, §23-4-111.
Public utility holding company act of 1935.
Securities, §23-42-102.
Public venue.
Recreational vehicle special events, §23-112-902.
Special motorcycle events, §23-112-802.
Published monthly average.
Life insurance policies and annuities, §23-81-109.
Purchase.
Public utilities.
Avoided cost, §23-3-702.

DEFINED TERMS —Cont'd
Purchased policy.
Life settlements, §23-81-802.
Purchase or assumption.
Bank mergers, conversions or other corporate actions, §23-48-501.
Purchaser.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Life settlements, §23-81-802.
Purchasing group.
Liability risk retention, §23-94-203.
Pure captive insurance company, §23-63-1601.
Pure premium.
Rates and rating organizations, §23-67-202.
Qualified assignment agreement.
Structured settlement protection act, §23-81-702.
Qualified family.
Insurance.
Minimum basic benefit policies, §23-98-102.
Qualified financial institution.
Title insurance, §23-103-402.
Qualified group.
Insurance.
Minimum basic benefit policies, §23-98-102.
Qualified health plan.
Health insurance exchanges, abortion coverage prohibited, §23-79-156.
Health insurance marketplace, §23-61-802.
Health insurance marketplace navigators, guides, certified application counselors, §23-64-602.
Qualified high risk pool.
Comprehensive health insurance pool, §23-79-503.
Qualified individual.
Insurance.
Minimum basic benefit policies, §23-98-102.
Qualified long-term care insurance contract.
Long-term care insurance, §23-97-304.
Qualified risk manager.
Surplus lines insurance, §23-65-304.
Qualified United States financial institution.
Credit for reinsurance law, §23-62-307.
Reinsurance intermediaries, §23-62-403.
Qualifying facility.
Public utilities.
Avoided cost, §23-3-702.

DEFINED TERMS —Cont'd
Radiation treatment.
Health insurance, outpatient coverage, §23-85-133.
Raffle.
Charitable bingo and raffles enabling act, §23-114-102.
Rail carrier, §23-16-101.
Railroad, §23-10-101.
Passes and free transportation, §23-4-801.
Railroad company.
Freight, §23-10-402.
Railroad corporation, §§23-10-101, 23-11-202.
Rates.
Public utilities, §23-1-101.
Avoided cost, §23-3-702.
Public utilities and regulated industries, §23-67-202.
Rates service organization, §23-67-202.
Rating period.
Small employer health insurance, §23-86-202.
RBC instructions.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
RBC level.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
RBC plan.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
RBC report.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Rebates.
Trade practices, §23-66-206.
Receiver.
Insurance company rehabilitation and liquidation, §23-68-102.
Trust companies, §23-51-102.
Receivership court.
Life and health insurance guaranty association, §23-96-104.
Reciprocal insurance, §23-70-101.
Reciprocal insurer, §23-70-101.
Reciprocal state.
Insurance company rehabilitation and liquidation, §23-68-102.
State insurance department, §23-61-111.

DEFINED TERMS —Cont'd
Reconciled item.
Insurance producers, §23-64-232.
Record.
Money services, §23-55-102.
Recoupment.
Recoupment from medical providers, §23-63-1801.
Recreational vehicle.
Recreational vehicle franchise act, §23-112-1003.
Recreational vehicle owners' organization.
Recreational vehicle special events, §23-112-902.
Recreational vehicle salesperson.
Recreational vehicle franchise act, §23-112-1003.
Recreational vehicle special events, §23-112-902.
Refund reserve.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Regional transmission organization.
Utility facility environmental and economic protection, §23-18-503.
Registered out-of-state bank, §23-45-102.
Regular route.
Motor carriers, §23-13-203.
Regulated broadband services.
Broadband over power lines enabling act, §23-18-801.
Regulation.
Health insurance portability and accountability, §23-86-303.
Regulatory action level event.
Risked-based capital requirements for health organizations, §23-63-1504.
Regulatory action level RBC.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Reinsurance, §23-60-102.
Fraudulent insurance acts, §23-66-501.
Reinsurance intermediary, §23-62-402.
Reinsurance intermediary broker, §23-62-402.
Reinsurance intermediary manager, §23-62-402.
Reinsurer.
Intermediaries, §23-62-402.
Related provider trust.
Life settlements, §23-81-802.
Relevant market area.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Religious employer.
Equity in prescription insurance and contraceptive coverage, §23-79-1102.
Remit.
Money services, §23-55-501.
Renal dialysis.
Health insurance, outpatient coverage, §23-85-133.
Renewable energy credit, §23-18-603.
Renewable energy technology.
Utility facility environmental and economic protection, §23-18-503.
Renewal.
Casualty insurance, §23-89-301.
Renewed, extended or modified.
Dental procedures, coverage of anesthesia and hospitalization for, §23-86-121.
Rental agreement.
Insurance, §23-64-202.
Self-service storage insurance, §23-64-233.
Rental company.
Insurance, §23-64-202.
Rental period.
Insurance, §23-64-202.
Rental vehicle.
Insurance, §23-64-202.
Renter.
Insurance, §23-64-202.
Reorganized stock insurer.
Mutual insurance holding companies, §23-69-303.
Replication transaction.
Insurance company investments, §23-63-841.
Representative.
Securities, §23-42-102.
Resale.
Telecommunications regulatory reform, §23-17-403.
Resident.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Life and health insurance guarantee association, §23-96-104.
Resident agent.
Insurance, §23-64-102.
Resident eligible person.
Comprehensive health insurance pool, §23-79-503.
Residual market mechanism.
Rates and rating organizations, §23-67-202.

DEFINED TERMS —Cont'd
Responsible administrative authority.
Structured settlement protection act, §23-81-702.
Responsible individual.
Money services, §23-55-102.
Responsible person.
Charitable bingo and raffles enabling act, §23-114-102.
Restrictions of any character.
Loans under Servicemen's Readjustment Act, §23-32-205.
Resulting bank, §23-45-102.
Bank mergers, conversions or other corporate actions, §23-48-501.
Retail cooperative member.
Generation and transmission cooperatives, §23-4-1101.
Retailer.
Lotteries, §23-115-103.
Retail sale.
Motor vehicle commission, §23-112-103.
Reverse mortgage, §23-54-103.
Fair mortgage lending act, §23-39-502.
Reverse mortgage transaction.
Home loan protection act, §23-53-103.
Risk management.
State insurance department, §23-61-603.
Risk manager.
State insurance department, §23-61-603.
Risk retention group.
Liability risk retention, §23-94-203.
Risks.
Title insurance, §23-103-402.
River crossing proprietor, §23-3-501.
RNA.
Genetic nondiscrimination in insurance act, §23-66-320.
Rules.
Fraternal benefit societies, §23-74-104.
Rural area.
Rural telecommunications cooperatives, §23-17-202.
Rural telephone company.
Telecommunications regulatory reform, §23-17-403.
Safe deposit box.
Banks, §23-45-102.
Sale.
Securities, §23-42-102.
Used motor vehicle buyer protection, §23-112-602.
Sale at retail.
Motor vehicle commission, §23-112-103.

DEFINED TERMS —Cont'd
Savings account.
Savings and loan associations, §23-37-101.
Savings and loan association.
Banks, §23-45-102.
Savings and loan holding company.
Regional savings and loan act, §23-37-802.
Savings associations.
Trust companies, §23-51-102.
Screening mammography.
Insurance policies, §23-79-140.
Second-stage manufacturer.
Motor vehicle commission, §23-112-103.
Secured claim.
Insurance company rehabilitation and liquidation, §23-68-102.
Secured party.
Electric utility storm recovery securitization financing, §23-18-902.
Securities, §23-42-102.
Public utilities, §23-1-101.
Securities act of 1933, §23-42-102.
Securities exchange act of 1934, §23-42-102.
Security holder.
Insurance holding company regulation, §23-63-503.
Security interest.
Electric utility storm recovery securitization financing, §23-18-902.
Self-insured.
Any willing provider law, enforcement, §23-99-802.
Self-insured health plan for employees of governmental entity.
Health insurance consumer protection, §23-99-420.
Self-service storage facility.
Self-service storage insurance, §23-64-233.
Self-service storage insurance, §23-64-233.
Sell.
Insurance producers, §23-64-502.
Securities, §23-42-102.
Used motor vehicle buyer protection, §23-112-602.
Seller.
Prepaid funeral benefits, §23-40-103.
Selling banks.
Mergers, conversions or other corporate actions, §23-48-506.

DEFINED TERMS —Cont'd

Service.
Air commerce, §23-14-102.
Motor carriers, §23-13-203.
Public utilities, §23-1-101.

Service area.
Video service act, §23-19-202.

Service corporation.
Regional savings and loan act, §23-37-802.

Service tier.
Video service act, §23-19-202.

Settled claim.
Structured settlement protection act, §23-81-702.

Settled policy.
Life settlements, §23-81-802.

Shareholder.
Trust companies, §23-51-102.

Shares.
Lotteries, §23-115-103.
Trust companies, §23-51-102.

Shipper.
Railroads.
Freight, §23-10-401.

Significant positive economic impact.
Recreational vehicle special events, §23-112-902.
Special motorcycle events, §23-112-802.

Single interest insurance.
Creditor-placed insurance, §23-101-103.

Small employer.
Health insurance, §23-86-202.
Health insurance coverage for mental illness, §23-99-503.
Health insurance marketplace, §23-61-802.
Health insurance portability and accountability, §23-86-303.

Small employer carrier.
Health insurance, §23-86-202.

Small-group markets.
Health insurance portability and accountability, §23-86-303.

Society.
Fraternal benefit societies, §23-74-104.

Solicit.
Continuing care providers, §23-93-103.
Licensing, §23-93-201.
Insurance producers, §23-64-502.

Southern region association.
Regional savings and loan act, §23-37-802.

DEFINED TERMS —Cont'd

Southern region savings and loan holding company.
Regional savings and loan act, §23-37-802.

Southern region states.
Regional savings and loan act, §23-37-802.

Special deposit claim.
Insurance company rehabilitation and liquidation, §23-68-102.

Special intrastate ILEC revenue, §23-17-403.

Special motorcycle event, §23-112-802.

Special passenger excursion train, §23-10-213.

Special purpose captive insurance company.
Captive insurance companies, §23-63-1601.

Special purpose entity.
Life settlements, §23-81-802.

Specialty.
Health insurance consumer protection, §23-99-403.

Specialty vehicle.
Motor vehicle commission, §23-112-103.

Sponsor.
Captive insurance companies, §23-63-1601.

Sponsored captive insurance company, §23-63-1601.

State.
Banks, §23-45-102.
Health insurance portability and accountability, §23-86-303.
Insurance, §23-60-102.
Insurance company rehabilitation and liquidation, §23-68-102.
Liability risk retention, §23-94-203.
Life and health insurance guaranty association, §23-96-104.
Money services, §23-55-102.
Regional savings and loan act, §23-37-802.
Securities, §23-42-102.
Surplus lines insurance, §23-65-304.
Trust companies, §23-51-102.

State agency.
Insurance departments, §23-61-603.
Rural telecommunications cooperatives, §23-17-202.

State association.
Regional savings and loan act, §23-37-802.

DEFINED TERMS —Cont'd
State bank, §23-45-102.
Trust companies, §23-51-102.
State-chartered lending institutions.
Loans under Servicemen's Readjustment Act, §23-32-205.
State law.
Health insurance portability and accountability, §23-86-303.
State-mandated health benefits.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Health insurance consumer choice, §23-79-802.
Statement of actuarial opinion.
Property and casualty actuarial opinion law, §23-63-1902.
State of emergency.
Bank commissioner emergency powers, §23-46-212.
State trust company, §23-51-102.
State trust institution, §23-51-102.
State trust company facilities.
Trust company investments, §23-51-121.
Step therapy.
Health insurance consumer protection, §23-99-420.
Stock association.
Savings and loan associations, §23-37-101.
Stock operations and advisory board contracts.
Trade practices, §23-66-206.
Stop loss coverage.
Comprehensive health insurance pool, §23-79-503.
Stored value.
Money services, §23-55-102.
Storm.
Electric utility storm recovery securitization financing, §23-18-902.
Storm recovery activity.
Electric utility storm recovery securitization financing, §23-18-902.
Storm recovery bonds.
Electric utility storm recovery securitization financing, §23-18-902.
Storm recovery charges.
Electric utility storm recovery securitization financing, §23-18-902.
DEFINED TERMS —Cont'd
Storm recovery costs.
Electric utility storm recovery securitization financing, §23-18-902.
Storm recovery property.
Electric utility storm recovery securitization financing, §23-18-902.
Storm recovery reserve.
Electric utility storm recovery securitization financing, §23-18-902.
Stranger-originated life insurance.
Life settlements, §23-81-802.
Structured settlement.
Structured settlement protection act, §23-81-702.
Structured settlement agreement.
Structured settlement protection act, §23-81-702.
Structured settlement annuity.
Life and health insurance guaranty association, §23-96-104.
Structured settlement obligor.
Structured settlement protection act, §23-81-702.
Structured settlement payment rights.
Structured settlement protection act, §23-81-702.
Study area.
Telecommunications regulatory reform, §23-17-403.
Subscriber.
Video service act, §23-19-202.
Subsidiary.
Insurance holding company regulation, §23-63-503.
Regional savings and loan act, §23-37-802.
Trust companies, §23-51-102.
Subsidiary trust company, §23-51-102.
Banks, §23-45-102.
Supervising entity.
Portable electronics insurance, §23-88-501.
Self-service storage insurance, §23-64-233.
Supervisory banking authority.
Automatic teller machines, §23-48-801.
Bank branches, §23-48-701.
Supplemental contract.
Life and health insurance guarantee association, §23-96-104.
Supplementary rate information.
Public utilities and regulated industries, §23-67-202.

DEFINED TERMS —Cont'd
Supplier.
Recreational vehicle franchise act, §23-112-1003.
Supporting information.
Rates and rating organizations, §23-67-202.
Surcharge.
Gas utilities, §23-3-602.
Surplus.
Prepaid funeral benefits, §23-40-101.
Trust companies, §23-51-102.
Surplus lines broker, §23-65-304.
Surplus lines insurer, §23-65-304.
Swap.
Insurance company investments, §23-63-841.
Switched-access service.
Telecommunications regulatory reform, §23-17-403.
Taxpayer.
Charitable bingo and raffles enabling act, §23-114-102.
Telecommunications company.
Rural telecommunications cooperatives, §23-17-202.
Telecommunications provider.
Telecommunications regulatory reform, §23-17-403.
Telecommunications provider rules.
Telecommunications regulatory reform, §23-17-403.
Telecommunications service.
Rural telecommunications cooperatives, §23-17-202.
Telecommunications regulatory reform, §23-17-403.
Temporary help services.
Professional employer organizations, §23-92-402.
Temporary permit.
Motor vehicle commission, §23-112-103.
Tender offer.
Merger or acquisition of control, §23-3-302.
Terminally ill.
Life settlements, §23-81-802.
Terminate.
Insurance producers, §23-64-502.
Terms of the structured settlement.
Structured settlement protection act, §23-81-702.
Text.
Insurance policies.
Simplification, §23-80-206.
Theft service.
Automobile clubs or associations, §23-77-101.

DEFINED TERMS —Cont'd
Third party administrator.
Multiple employer trusts and self-insured plans, §23-92-201.
Ticket.
Lotteries, §23-115-103.
Tier one company.
Telecommunications regulatory reform, §23-17-403.
Title insurance agency, §23-103-402.
Title insurance agent, §23-103-402.
Title insurance business, §23-103-402.
Title insurance policy, §23-103-402.
Title insurance premium, §23-103-402.
Title insurance report, §23-103-402.
Title insurer, §23-103-402.
To be in violation.
Reinsurance intermediaries, §23-62-402.
Toll reseller.
Telecommunications, §23-17-403.
Total adjusted capital.
Risk-based capital act, §23-63-1302.
Risked-based capital requirements for health organizations, §23-63-1501.
Total customer access base.
Telecommunications, §23-17-403.
Total eligible employees.
Health insurance, small employer health insurance purchasing groups, §23-86-502.
Total loan amount.
Home loan protection act, §23-53-103.
Totten trust.
Banks, §23-47-204.
Touring service.
Automobile clubs or associations, §23-77-101.
Towing service.
Automobile clubs or associations, §23-77-101.
TPRs.
Telecommunications regulatory reform, §23-17-403.
Trade adjustment assistance eligible person.
Comprehensive health insurance pool, §23-79-503.
Transact.
Insurance, §23-60-102.
Transact business within the general public.
Private trust companies, §23-51-118.
Transacting insurance.
Professional employer organizations, §23-92-402.

DEFINED TERMS —Cont'd
Transfer.
Structured settlement protection act, §23-81-702.
Transfer agreement.
Structured settlement protection act, §23-81-702.
Transferee.
Structured settlement protection act, §23-81-702.
Transfer expenses.
Structured settlement protection act, §23-81-702.
Transient customer.
Recreational vehicle franchise act, §23-112-1003.
Transition costs.
Electric utilities, recovery, §23-4-209.
Transportation, §23-2-201.
Air commerce, §23-14-102.
Motor carriers, §23-13-203.
Transportation company.
Passes and free transportation, §23-4-801.
Transportation of gas.
Natural gas pipeline safety, §23-15-203.
Travel insurance, §23-64-202.
Travel trailer.
Recreational vehicle franchise act, §23-112-1003.
Trust business.
Trust companies, §23-51-102.
Trust company, §23-51-102.
Trust deposits.
Trust companies, §23-51-102.
Trustees.
Prepaid funeral benefits, §23-40-103.
Trust institution, §23-51-102.
Trust office.
Trust companies, §23-51-102.
Type.
Health insurance consumer protection, §23-99-403.
Ultimate purchaser.
Motor vehicle commission, §23-112-103.
Unallocated annuity contract.
Life and health insurance guaranty association, §23-96-104.
Unauthorized insurer, §23-60-102.
Surplus lines insurance, §23-65-304.
Unauthorized trust activity.
Trust companies, §23-51-102.
Unclaimed lottery prize money.
Lotteries, §23-115-103.
Underlying carrier.
Telecommunications, §23-17-403.

DEFINED TERMS —Cont'd
Underlying interest.
Insurance company investments, §23-63-841.
Underwrite.
Insurance managing general agents, §23-64-402.
Title insurance, §23-103-402.
Underwriting: refusing certain risks.
Trade practices, §23-66-206.
Undivided profits.
Trust companies, §23-51-102.
Unfair claims settlement practices, §23-66-206.
Unfair discrimination.
Trade practices, §23-66-206.
Uniform application.
Insurance producers, §23-64-502.
Uniform business entity application.
Insurance producers, §23-64-502.
Uniform commercial code-secured transactions.
Electric utility storm recovery securitization financing, §23-18-902.
Uninsured motor vehicles, §23-89-401.
Common carriers, §23-16-301.
Unique identifier.
Fair mortgage lending act, §23-39-502.
Universal service.
Telecommunications regulatory reform, §23-17-403.
Universal service administration company.
Telecommunications regulatory reform, §23-17-403.
Unsafe or unsound practice.
Money services, §23-55-102.
USAC.
Telecommunications regulatory reform, §23-17-403.
Usage fee.
Automatic teller machines, §§23-32-208, 23-48-810.
Used motor vehicle.
Buyer protection, §23-112-602.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyers protection, §23-112-602.
Used motor vehicle dealer.
Motor vehicle commission, §23-112-103.
Used motor vehicle salesman.
Buyer protection, §23-112-602.
Usual and customary records.
Insurance producers and service representatives, §23-64-220.

DEFINED TERMS —Cont'd
Utility.
Environmental and economic protection, §23-18-503.
Utility services.
Merger or acquisition of control of domestic public utilities, §23-3-302.
Vehicle.
Insurance, §23-64-202.
Vendor.
Lotteries, §23-115-103.
Portable electronics insurance, §23-88-501.
Video lottery.
Lotteries, §23-115-103.
Video service.
Video service act, §23-19-202.
Video service provider.
Video service act, §23-19-202.
Voting security.
Insurance holding company regulation, §23-63-503.
Mutual insurance holding companies, §23-69-303.
Public utilities.
Merger or acquisition of control, §23-3-302.
Trust companies, §23-51-102.
Waiting period.
Health insurance portability and accountability, §23-86-303.
Warrant.
Insurance company investments, §23-63-841.
Warrantor.
Recreational vehicle franchise act, §23-112-1003.
Wet marine and foreign trade insurance, §23-60-102.
Wholesaler.
Motor vehicle commission, §23-112-103.
Used motor vehicle buyer protection, §23-112-602.
Wholly owned Arkansas bank holding company.
Bank mergers, conversions or other corporate actions, §23-48-501.
Wire center.
Telecommunications regulatory reform, §23-17-403.
Wireless ETC.
Telecommunications regulatory reform, §23-17-403.
Wireline ETC.
Telecommunications regulatory reform, §23-17-403.

DEFINED TERMS —Cont'd
Written designation.
Financial institutions, §23-32-207.
X rays.
Health insurance, outpatient coverage, §23-85-133.

DENTAL POINT OF SERVICE OPTION.
Health insurance.
Anesthesia and hospitalization for dental procedures, coverage, §23-86-121.
Health insurance carriers, §§23-99-601 to 23-99-608.
Applicability of subchapter, §23-99-608.
Attorney General to defend subchapter, §23-99-607.
Benefits offered same as offered through network, §23-99-604.
Coverage for out-of-network dentists, §23-99-604.
Definitions, §23-99-603.
Dental point of service act, §23-99-601.
Effective date, §23-99-608.
Enforcement authority of insurance Commissioner, §23-99-606.
Findings of general assembly, §23-99-602.
Purposes, §23-99-602.
Rules and regulations, §23-99-605.

DENTISTS AND DENTISTRY.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance.
Dental claim based on medical necessity, denial, §23-79-158.

DEPOSITIONS.
Highways.
State highway and transportation department, §23-2-412.
Public service commission, §23-2-412.

DEPOSITS.
Credit unions generally, §§23-35-101 to 23-35-805.
Hospital and medical service corporations.
Protection of subscribers, §23-75-109.
Required, §23-75-109.

DEPOSITS —Cont'd
Public utilities.
Consumer deposits.
Interest on, §23-4-206.
Savings and loan associations, §§23-37-101 to 23-37-812.

DERAILMENT.
Clearing right of way following, §23-12-203.

DEVELOPMENTAL DISABILITIES.
Autism.
Health insurance coverage.
Autism spectrum disorders, §23-99-418.

DIABETES.
Insurance coverage, §§23-79-601 to 23-79-607.
Applicability.
Exceptions, §23-79-607.
Policies, §23-79-606.
Definitions, §23-79-601.
Exclusions, §23-79-604.
Requirements, §23-79-603.
Rules and regulations, §23-79-605.
Self-management training, §23-79-602.

DIETETICS PRACTICE.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

DIRECT ACTION.
Insurers, §23-79-210.

DISABILITIES, INDIVIDUALS WITH.
Insurance.
Health insurance policies.
Exceptions to requirements, §23-85-131.

DISABILITY INSURANCE.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Health insurance.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

DISABILITY INSURANCE —Cont'd
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.

DISCOVERY.
Insurance.
Unfair competition and trade practices.
Production of books, §23-66-209.

DISCRIMINATION.
Charitable bingo and raffles.
Admission to raffle or game of bingo.
Discrimination prohibited, §23-114-404.
Choice of health care providers by patients.
Discriminatory terms in health benefit plans, §23-99-204.
Health insurance portability and accountability.
Discrimination based on health status, §23-86-306.
Public utilities.
Complaints to commission, §23-3-119.
Investigations.
Preliminary investigation by commission, §23-3-118.
Pole attachments.
Nondiscriminatory access, §23-4-1002.
Unreasonable preferences prohibited, §23-3-114.

DISGORGEMENT.
Mortgage bankers, brokers and servicers.
Discipline of licensees, §23-39-514.
Securities regulation.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.

DISSOLUTION.
Credit unions.
Voluntary dissolution.
Procedure, §§23-35-703, 23-35-705.

DIVIDENDS.
Banks.
Payment, §23-48-203.
Credit unions.
Declaration of dividends, §23-35-607.
Savings and loan associations.
Savings accounts, §23-37-403.

DIVORCE.
Insurance.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.

DNA TEST RESULTS.
Insurance.
Genetic nondiscrimination in insurance act, §23-66-320.

DOMESTIC STOCK AND MUTUAL INSURERS.
Additional kinds of insurance, §23-69-117.
Applicability of chapter, §23-69-101.
Applicability of general corporation statutes, §23-69-103.
Assessments.
Stockholders or members, §23-69-139.
Assets.
Distribution of assets to stockholders upon dissolution, §23-69-154.
Impairment, §23-69-138.
Liquidation.
Mutual member's share of assets upon liquidation, §23-69-155.
Assumption reinsurance, §§23-69-149, 23-69-150.
Board of directors.
Vacancies on board, §23-69-110.
Bylaws of mutuals, §23-69-119.
Capital.
Impairment, §23-69-138.
Charters.
Extinguishment of unused corporate charters, §23-69-156.
Confidentiality of information.
Provisions for the prevention of unfair use of information by owners, directors or officers, §23-69-205.
Conflicts of interest.
Prohibited pecuniary interest of officials, §23-69-109.
Consideration for stock, §23-69-127.
Consolidations.
Acquiring corporations under a plan of exchange to be separate, §23-69-147.
Effect, §23-69-145.
Exchange of stock of stock insurers, §23-69-142.
Effect of exchange under plan, §23-69-146.
Mutual insurers, §23-69-143.
Nonconsenting stockholders, §23-69-148.
Plan of exchange of shares agreement, §23-69-144.
Contracts.
Management and exclusive agency contracts, §23-69-137.
Contributions.
Authorization, §23-69-111.

DOMESTIC STOCK AND MUTUAL INSURERS —Cont'd
Conversions, §23-69-141.
Corporations.
Articles of incorporation.
Amendments, §23-69-107.
Filing and approval, §23-69-106.
Bylaws of mutuals, §23-69-119.
Charters.
Extinguishment of unused corporate charters, §23-69-156.
Incorporation of domestic stock and domestic mutual insurers, §23-69-105.
Membership in mutuals, §23-69-118.
Nonlife mutual insurers.
Applications for insurance during formation, §23-69-114.
Powers generally, §23-69-111.
Formation, §23-69-113.
Powers of companies not enlarged, §23-69-104.
When deemed to have engaged in business of insurance, §23-69-156.
Definitions, §23-69-102.
Dissolution.
Failure of mutual insurer to complete organization, §23-69-116.
Voluntary dissolution.
Continuation for suit and winding up affairs, §23-69-153.
Directors to act as trustees, §23-69-152.
Distribution of assets to stockholders, §23-69-154.
Procedure, §23-69-151.
Dividends.
Illegal dividends, §23-69-131.
Mutual policyholders, §23-69-130.
Stockholders, §23-69-129.
Domestic insurance companies.
Liquidation.
Claims of nonresidents, §23-68-116.
Conduct of delinquency proceedings against, §23-68-113.
Funds, §23-68-114.
Order, §23-68-111.
Rehabilitation.
Claims of nonresidents against, §23-68-116.
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Funds, §23-68-114.
Equity securities.
Application of provisions to foreign or domestic arbitrage transactions, §23-69-203.
Application to registered, §23-69-202.

DOMESTIC STOCK AND MUTUAL INSURERS —Cont'd
Equity securities —Cont'd
Defined, §23-69-201.
Holding in an investment account, §23-69-207.
Restrictions upon sale, §23-69-206.
Rules and regulations.
Promulgation, §23-69-208.
Statement of owners, §23-69-204.
Expenditures.
Vouchers, §23-69-135.
Failure of mutual insurer to complete organization, §23-69-116.
General corporation statutes.
Applicability, §23-69-103.
Home office, §23-69-134.
Impairment of capital, §23-69-138.
Initial qualifications.
Authorization to transact certain kinds of business, §23-69-112.
Liabilities.
Contingent liability of nonlife mutual members, §23-69-124.
Enforcement, §23-69-124.
Stockholders, §23-69-133.
Liquidation.
Mutual member's share of assets on liquidation, §23-69-155.
Meetings.
Stockholders, §23-69-120.
Members.
Assessments, §23-69-139.
Membership in mutuals, §23-69-118.
Mergers.
Acquiring corporations under a plan of exchange, §23-69-147.
Effect, §23-69-145.
Exchange of stock of stock insurers, §23-69-142.
Effect of exchange under plan, §23-69-146.
Mutual insurers, §23-69-143.
Nonconsenting stockholders, §23-69-148.
Plan of exchange of shares agreement, §23-69-144.
Mutualization of stock insurers, §23-69-140.
Nonlife mutual insurers.
Applications for insurance during formation, §23-69-114.
Contingent liability, §23-69-124.
Enforcement, §23-69-124.
Deposit of security required, §23-69-113.
Formation, §23-69-113.

DOMESTIC STOCK AND MUTUAL INSURERS —Cont'd
Officers, §23-69-108.
Conflicts of interest, §23-69-109.
Statement of officers of domestic stock insurance companies, §23-69-204.
Participating policies, §23-69-126.
Penalties.
Illegal dividends, §23-69-131.
Personal property.
Situs for taxation, §23-69-136.
Policies.
Dividends to mutual policyholders, §23-69-130.
Issuance, §23-69-115.
Management and exclusive agency contracts, §23-69-137.
Nonassessable policies, §23-69-125.
Revocation of authority, §23-69-125.
Premiums.
Trust deposit, §23-69-115.
Proxies, §23-69-122.
Corrupt practices, §23-69-123.
Qualifications.
Initial qualifications, §23-69-112.
Records.
Confidentiality of information.
Provisions for the prevention of unfair use of information, §23-69-205.
Keeping, §23-69-134.
Penalty for unlawful removal, §23-69-134.
Reinsurance.
Assumption reinsurance, §§23-69-149, 23-69-150.
Rules and regulations.
Equity securities, §23-69-208.
Scope of chapter, §23-69-101.
Shares of stock.
Consideration, §23-69-127.
Equity securities.
Application of provisions to foreign or domestic arbitrage transactions, §23-69-203.
Application to register, §23-69-202.
Defined, §23-69-201.
Holding in an investment account, §23-69-207.
Restrictions upon sale, §23-69-206.
Rules and regulations, §23-69-208.
Statement of owners, §23-69-204.
Transfer of stock, §23-69-128.
Stockholders.
Assessments, §23-69-139.
Dissolution of company.
Distribution of assets to stockholders, §23-69-154.

DOMESTIC STOCK AND MUTUAL INSURERS —Cont'd
Stockholders —Cont'd
Dividends, §23-69-129.
Equity securities.
Statement of owners, §23-69-204.
Liability, §23-69-133.
Meetings, §23-69-120.
Mergers and consolidations.
Effect of exchange under plan of exchange, §23-69-146.
Exchange of stock of stock insurers, §23-69-142.
Acquiring corporations under a plan of exchange, §23-69-147.
Nonconsenting stockholders, §23-69-148.
Plan of exchange of shares agreement, §23-69-144.
Mutualization of stock insurers, §23-69-140.
Proxies, §23-69-122.
Voting rights, §23-69-121.
Corrupt practices, §23-69-123.
Proxies, §23-69-122.
Corrupt practices, §23-69-123.
Stock transfer books.
Closing, §23-69-121.
Surpluses.
Borrowed surplus, §23-69-132.
Taxation.
Personal property.
Situs, §23-69-136.
Transactions.
Additional kinds of insurance, §23-69-117.
Transfer of stock, §23-69-128.
Vacancies on board of directors, §23-69-110.
Winding up affairs, §23-69-153.

DRAINAGE.
Railroads.
Drainage of roadbed, §23-12-204.

DRIVE-THRU DELIVERIES.
Health insurance, §23-99-404.

DRUGS AND CONTROLLED SUBSTANCES.
Health insurance.
Enforcement administration registry number protection, §23-66-702.
Legislative declaration, §23-66-701.
Policy provisions, §23-85-126.
Prescriptions.
Formulary for prescription drugs, §23-99-409.
Notice of changes, §23-79-159.

DRUGS AND CONTROLLED SUBSTANCES —Cont'd
Insurance.
Health insurance policy provisions, §23-85-126.
Motor carriers.
Operation under influence of controlled substances, §23-13-258.
Prescriptions.
Health insurance.
Formulary for prescription drugs, §23-99-409.
Notice of changes, §23-79-159.
Railroads.
Safe transportation of railroad employees by contract carriers.
Testing of driver for banned substances, §23-16-505.

DRUG TESTING.
Railroads.
Safe transportation of railroad employees by contract carriers.
Driver testing, §23-16-505.

DURABLE MEDICAL EQUIPMENT.
Any willing provider law enforcement.
Health care provider defined to include provider of durable medical equipment, §23-99-803.

DVD PLAYERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

E

EARTHQUAKE AUTHORITY, §§23-102-101 to 23-102-119.
Administrative assessment, §23-102-112.
Amount of coverage offered, §23-102-113.
Appeals of ruling or decision of board, §23-102-115.
Assessment by insurers, §23-102-112.
Board.
Executive director or plan administrator, appointment, §23-102-111.
Membership, terms, vacancies and expenses, §23-102-105.
Plan of operation, adoption, §23-102-107.
Powers, §23-102-108.
Body politic of state, §23-102-104.
Contributions, initial operating capital, §23-102-112.

EARTHQUAKE AUTHORITY —Cont'd
Coordination with federal or multistate program, §23-102-117.
Coverage accessible through authority, §23-102-110.
Created, §23-102-104.
Deductibles determined by board, §23-102-113.
Definitions, §23-102-103.
Eligibility for residential earthquake insurance.
Notice to policyholders, §23-102-114.
Executive director.
Appointment by board, duties, §23-102-111.
Exemption from property and casualty insurance guaranty act, §23-102-118.
Exemption from taxes, §23-102-104.
Immunity of participating insurers, authority agents or employees, etc., §23-102-106.
Intent of provisions, §23-102-102.
Legislative findings, §23-102-102.
Living expenses, coverage for, §23-102-113.
Market assistance program, §23-102-109.
Suspension, availability and competition in marketplace, §23-102-107.
Noticed as to eligibility for insurance, §23-102-114.
Participation by insurers in market assistance program, §23-102-109.
Personal property, coverage for, §23-102-113.
Plan administrator.
Appointment by board, duties, §23-102-111.
Plan of operation, §23-102-107.
Political subdivision, authority created as, §23-102-104.
Powers of board, §23-102-108.
Purchasing law and procurement act, exemption, §23-102-104.
Rates for plan coverage, §23-102-112.
Rulemaking authority, §23-102-116.
Short title, §23-102-101.
Suspension of operations of market assistance program or authority.
Sufficient availability and competition in marketplace, §23-102-107.
Termination of authority, §23-102-119.

EARTHQUAKE INSURANCE.
Residential earthquake insurance.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.

EAVESDROPPING.
Interception of telephone or telegraph messages, §23-17-107.

ECONOMIC AND COMMUNITY DEVELOPMENT.
Minority business economic development.
Lotteries.
Participation by minority-owned businesses, §23-115-401.
Recreational vehicle special events, §§23-112-901 to 23-112-905.

EDUCATION.
Lottery for education, §§23-115-101 to 23-115-1102.

ELECTIONS.
Greyhound racing.
Wagering on electronic games of skill.
Approval by local option election, §23-113-201.
Horse racing.
Racing meets.
Sunday racing, §23-110-402.
Wagering on electronic games of skill.
Approval by local option election, §23-113-201.
Rural telecommunications cooperatives.
Board of directors, §23-17-219.

ELECTRIC COOPERATIVE CORPORATIONS.
Acquired.
Defined, §23-18-302.
Acquisition of energy, capacity and generation assets.
Rules and regulations regarding, adoption by commission, §23-18-106.
Alternative methods to meet obligations, utilization.
Rules and regulations regarding, adoption by commission, §23-18-106.
Articles of incorporation.
Amendment, §23-18-313.
Articles of amendment, §23-18-313.
Fees, §23-18-326.
Contents, §23-18-311.
Defective articles.
Correction, §23-18-315.
Execution, §23-18-312.
Fees, §23-18-326.
Filing, §23-18-312.
Recordation, §23-18-312.
Board of directors.
Agents, §23-18-323.

ELECTRIC COOPERATIVE CORPORATIONS —Cont'd
Board of directors —Cont'd
Compensation, §23-18-321.
Conflicts of interest, §23-18-321.
Defined, §23-18-302.
Duties, §23-18-321.
Election, §23-18-321.
Employees, §23-18-323.
Executive committee, §23-18-322.
Meetings, §23-18-321.
Number, §23-18-321.
Officers, §23-18-323.
Prudent person rule, §23-18-321.
Qualifications, §23-18-321.
Quorum, §23-18-321.
Standards of care, §23-18-321.
Vacancies, §23-18-321.
Bylaws.
Contents.
Generally, §23-18-317.
Power to alter, amend or repeal, §23-18-317.
Qualifications of directors, §23-18-321.
Certificate of incorporation.
Evidence, §23-18-314.
Issuance, §23-18-314.
Citation, §23-18-301.
Comprehensive resource planning.
Rules and regulations regarding, adoption by commission, §23-18-106.
Conflicts of interest.
Board of directors, §23-18-321.
Consolidation.
Articles of consolidation.
Execution, etc., §23-18-324.
Fees, §23-18-326.
Authorized, §23-18-324.
Construction of article.
Liberal construction, §23-18-303.
Corporate powers, §23-18-307.
Corporation.
Defined, §23-18-302.
Correcting defects of organization, §23-18-315.
Defects of organization.
Correction, §23-18-315.
Definitions, §23-18-302.
Rates and charges, §23-4-901.
Dissolution.
Articles of dissolution.
Fees, §23-18-321.
Authorized, §23-18-325.
Certificate of dissolution.
Execution, §23-18-325.
Eligibility to membership, §23-18-318.

ELECTRIC COOPERATIVE CORPORATIONS —Cont'd
Executive committee.
Election, §23-18-322.
Existing corporations may come under law, §23-18-305.
Federal agencies.
Defined, §23-18-302.
Fees.
Annual license fee, §23-18-329.
Filing fees, §23-18-326.
Generation and transmission cooperatives, §§23-4-1101 to 23-4-1107.
Definitions, §23-4-1101.
Jurisdiction of public service commission, §23-4-1107.
Member cooperative rate modifications, §23-4-1105.
Rates and charges.
Alternative procedure, §23-4-1104.
Application for approval, §23-4-1104.
Authority to modify, §23-4-1102.
Limitations on increases, §23-4-1106.
Member cooperative modifications, §23-4-1105.
Notice of proposed modification, §23-4-1103.
Incorporated areas.
Service in, §23-18-331.
Incorporators.
Age, §23-18-309.
Number, §23-18-309.
Residents, §23-18-309.
Investigations.
Rates and charges.
Public service commission, §23-4-908.
Jurisdiction.
Public service commission, §23-18-308.
Rates and charges.
Public service commission.
Jurisdiction not affected, §23-4-907.
Liberal construction of act, §23-18-303.
Meetings.
Directors' meetings, §23-18-321.
Quorum of members, §23-18-320.
Members.
Certificate of membership, §23-18-319.
Surrender, §23-18-319.
Defined, §23-18-302.
Eligibility to membership, §23-18-318.
Organizational meeting.
Notice, §23-18-316.
Quorum, §23-18-320.

ELECTRIC COOPERATIVE CORPORATIONS —Cont'd
Nonprofit operation, §23-18-327.
Notice.
Organizational meeting, §23-18-316.
Rates and charges.
Changes.
Proposed rate changes, §23-4-903.
Obligations.
Defined, §23-18-302.
Other laws inapplicable, §23-18-304.
Person.
Defined, §23-18-302.
Petitions.
Rates and charges.
Petition for relief from rate change, §§23-4-904, 23-4-905.
Petition to declare co-op subject to rate case procedures, §23-4-906.
Powers.
Generally, §23-18-307.
Public service commission.
Corporations subject to jurisdiction, §§23-18-201, 23-18-308.
Purposes, §23-18-306.
Quorum.
Board of directors, §23-18-321.
Rates and charges.
Apportionment of rates and charges, §23-4-909.
Changes.
Notice of proposed rate change, §23-4-903.
Petition for relief from rate change.
Effect, §23-4-905.
Form, §23-4-904.
Relief from rate change.
Petition.
Effect, §23-4-905.
Form, §23-4-904.
Costs of providing service.
Apportionment of rates and charges, §23-4-909.
Definitions, §23-4-901.
Exemption from rate case procedures, §23-4-902.
Hearings.
Exemption from rate case procedures, §23-4-902.
Investigations.
Public service commission, §23-4-908.
Jurisdiction.
Public service commission.
Jurisdiction not affected, §23-4-907.
Notice.
Changes.
Proposed rate changes, §23-4-903.

ELECTRIC COOPERATIVE CORPORATIONS —Cont'd
Rates and charges —Cont'd
Petition for relief from rate changes, §§23-4-904, 23-4-905.
Petition to declare co-op subject to rate case procedures, §23-4-906.
Public service commission.
Investigations, §23-4-908.
Jurisdiction.
Not affected, §23-4-907.
Powers, §23-4-908.
Rate case procedures.
Exemption, §23-4-902.
Petition to declare co-op subject to rate case procedures, §23-4-906.
Revenues.
Use of revenues, §23-18-327.
Securities.
Exemptions from securities act, §23-18-330.
Service.
Incorporated areas, §23-18-331.
Short title, §23-18-301.
Taxation.
Corporation subject to certain taxes, §23-18-328.
Exemption of corporation from certain taxes, §23-18-328.
Title.
Short title, §23-18-301.
Use of words "electric cooperative."
Prohibition, §23-18-310.

ELECTRICITY.
Arkansas clean energy development act, §§23-18-701 to 23-18-703.
Arkansas renewable energy development act of 2001, §§23-18-601 to 23-18-604.
Avoided costs.
Public utilities, §§23-3-701 to 23-3-705.
Bills, usage and payment records.
Confidentiality of information, §23-2-304.
Broadband over power enabling act, §§23-18-801 to 23-18-808.
Clean energy development act, §§23-18-701 to 23-18-703.
Coal.
Arkansas-mined coal.
Use by electric utilities, §23-18-105.
Confidentiality of information.
Electric utility bills, usage and payment records, §23-2-304.
Cooperatives.
Electric cooperative corporations, §§23-4-1101 to 23-4-1107, 23-18-301 to 23-18-331.

ELECTRICITY —Cont'd
Corporations.
Foreign electric light and power corporations.
Domestication.
Required, §23-3-108.
Service of process, §23-3-108.
Disconnections.
Protection against.
Power of public service commission, §23-2-304.
Electric cooperative corporations, §§23-4-1101 to 23-4-1107, 23-18-301 to 23-18-331.
Major utility facilities.
Environmental and economic protection, §§23-18-501 to 23-18-530.
Regulation of electric demand response act, §§23-18-1001 to 23-18-1005.
Renewable energy development, §§23-18-601 to 23-18-604.
Transfer of electric transmission lines.
Approval of public service commission required, §23-3-102.
Transition costs.
Defined, recovery by electric utility, §23-4-209.
Waters and watercourses.
Navigable water crossings.
General provisions, §§23-3-501 to 23-3-513.

ELECTRIC UTILITIES.
Acquisition of energy, capacity and generation assets.
Rules and regulations regarding, adoption by commission, §23-18-106.
Alternative methods to meet obligations, utilization.
Rules and regulations regarding, adoption by commission, §23-18-106.
Avoided costs.
Definitions, §23-3-702.
Legislative declaration, §23-3-701.
Policy of state, §23-3-701.
Public service commission.
Definition of "commission," §23-3-702.
Rates.
Establishment, §23-3-703.
Rates.
Basis of rate determination, §23-3-704.

ELECTRIC UTILITIES —Cont'd
Avoided costs —Cont'd
Rates —Cont'd
Contract rates.
Lower contract rates permitted, §23-3-705.
Defined, §23-3-703.
Establishment, §23-3-703.
Lower contract rates permitted, §23-3-705.
Waiver of avoided cost standard, §23-3-704.
Coal.
Arkansas-mined coal.
Use by electric utilities, §23-18-105.
Comprehensive resource planning.
Rules and regulations regarding, adoption by commission, §23-18-106.
Confidentiality.
Utility bills, usage and payment records, §23-2-304.
Cooperatives.
Generally, §§23-18-301 to 23-18-331.
Generation and transmission cooperatives, §§23-4-1101 to 23-4-1107.
Demand response, §§23-18-1001 to 23-18-1005.
Applicability, §23-18-1005.
Definitions, §23-18-1002.
Marketing and selling within state.
Authority of commission to regulate, §23-18-1003.
Into wholesale electricity markets, §23-18-1004.
Title of act, §23-18-1001.
Wholesale electricity markets.
Marketing and selling in, §23-18-1004.
Disconnections.
Protection against, public service commission, §23-2-304.
Electric demand response.
Regulation, §§23-18-1001 to 23-18-1005.
Incremental resources, acquisition or construction.
Costs and return associated with, recovery and allowance, §23-18-107.
Purchase from affiliated company.
Applicability of act, §23-18-103.
Definitions, §23-18-103.
Prior approval of commission required, §23-18-103.
Regulations.
Promulgation, §23-18-103.

ELECTRIC UTILITIES —Cont'd
Purchase from affiliated company —Cont'd
Void agreements, §23-18-103.
Storm recovery.
Cost reserve accounting, §23-4-112.
Securitization financing, §§23-18-901 to 23-18-912.
Adjustments on financing orders, §23-18-903.
Assignee or financing party not considered electric utility, §23-18-912.
Bond investment and debt status, §23-18-909.
Conflict of laws, §23-18-908.
Default or termination of bonds, §23-18-907.
Definitions, §23-18-902.
Financing orders, §23-18-903.
Storm recovery property specified, §23-18-905.
Income tax on receipts, §23-18-910.
Issuance of bonds following financing order, §23-18-903.
Jurisdiction of public service commission, §23-18-904.
Pledge of state on bonds, §23-18-911.
Priority of conflicting interests, §23-18-907.
Purpose of act, §23-18-901.
Security interests, §23-18-907.
Storm recovery property, §23-18-905.
Sale, assignment or transfer, §23-18-906.
Title of act, §23-18-901.
Uniform commercial code applicability, §23-18-907.
Venue of actions to enforce security interests, §23-18-907.
Transfer of electric transmission lines.
Approval of public service commission required, §23-3-102.
Transition costs.
Defined, recovery by electric utility, §23-4-209.

ELECTRONIC FUNDS TRANSFERS.
Financial institutions.
Stop-payment orders, §23-32-210.

ELECTRONIC GAMES.
Greyhound racing.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.
Horse racing.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.

ELECTRONIC SURVEILLANCE.
Interception of telephone or telegraph messages, §23-17-107.

E-MAIL.
Portable electronics insurance.
Notice to enrolled customer.
Proof of notice, §23-88-506.

EMBEZZLEMENT.
Banks, §23-50-105.

EMERGENCIES.
Bank commissioner.
Emergency powers, §23-46-212.
Insurance.
Risk management.
Procurement of insurance or surety bonding under emergency conditions, §23-61-606.
Telecommunications.
Immediate dispatch of public messages during war or civil commotion, §23-17-106.
Failure to give immediate dispatch, §23-17-106.

EMINENT DOMAIN.
Pipelines.
Fertilizer.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture.
Companies operating under provisions, §23-15-105.
Right of pipeline companies.
Procedure in exercising right, §23-15-101.
Public utilities.
Environmental and economic protection, §23-18-528.
Rural telecommunications cooperatives.
Powers, §23-17-205.
Water power companies.
Costs.
Payment, §23-18-406.
Damages.
Assessment, §23-18-406.
Jury, §23-18-406.
Payment, §23-18-406.
Forfeiture of rights for failure to pay, §23-18-406.
Deposit required pending litigation, §23-18-406.
Forfeiture of rights for failure to deposit, §23-18-406.
Guardian ad litem.
Proceedings against infants and insane persons, §23-18-406.

EMINENT DOMAIN —Cont'd
Water power companies —Cont'd
Insane persons.
Proceedings against.
Guardian ad litem appointed, §23-18-406.
Jury.
Assessment of compensation, §23-18-406.
Minors.
Proceedings against infants.
Guardian ad litem appointed, §23-18-406.
Notice.
Nonresident landowners, §23-18-406.
Petition, §23-18-406.
Contents, §23-18-406.
Power of eminent domain, §23-18-406.
Railroad in connection with construction of dams.
Acquisition of right of way, §23-18-407.

EMPLOYMENT RELATIONS.
Greyhound racing.
Employees of franchise holders, §23-111-308.
Wagering on electronic games of skill.
Licenses for employees and suppliers, §23-113-303.
Horse racing.
Employees of franchise holders, §§23-110-308, 23-110-412.
Wagering on electronic games of skill.
Licenses for employees and suppliers, §23-113-303.
Professional employer organizations, §§23-92-401 to 23-92-419.
Public utilities.
Acts of employee are acts of corporation, §23-1-107.

ENERGY.
Clean energy development act, §§23-18-701 to 23-18-703.
Public utilities.
Energy conservation, §§23-3-401 to 23-3-405.
Renewable energy development, §§23-18-601 to 23-18-604.

ENVIRONMENTAL PROTECTION.
Public utilities.
Environmental and economic protection, §§23-18-501 to 23-18-530.

EQUITY IN PRESCRIPTION INSURANCE AND CONTRACEPTIVE COVERAGE, §§23-79-1101 to 23-79-1104.
Contraceptive coverage, §23-79-1103.
Definitions, §23-79-1102.
Extraordinary surcharges prohibited, §23-79-1104.
Short title, §23-79-1101.

ESTOPPEL.
Bonds, surety.
Surety insurers.
Denying corporate power to be surety, §23-63-1004.
Insurance.
Surety insurers.
Denying corporate power to be surety, §23-63-1004.

ETHICS.
Commission.
Lottery vendors, enforcement powers regarding, §23-115-501.

EVIDENCE.
Bank department.
Sealed instruments, §23-46-203.
Health maintenance organizations.
Coverage and charges for health care services, §23-76-112.
Highways.
State highway and transportation department.
Copies of official papers, §23-1-111.
Rules of evidence, §23-2-403.
Insurance.
Commissioner, §23-61-301.
Policies.
Applications, §23-79-106.
Surplus lines, §23-65-311.
Motor vehicles.
Event data recorders, §23-112-107.
Public service commission.
Copies of official papers, §23-1-111.
Rules of evidence, §23-2-403.
Rural telecommunications cooperatives.
Certificate of incorporation, §23-17-212.
Securities regulation.
Violation of provisions, §23-42-105.
Trust companies.
Commissioner's witness powers, §23-51-190.

EXAMINATIONS.
Continuing care providers.
Insolvent facilities.
Financial examinations conducted, §23-93-114.

EXAMINATIONS —Cont'd
Credit unions.
Fees, §23-35-203.
Report, §23-35-203.
Supervisor to examine, §23-35-203.
Health maintenance organizations.
Taking when commissioner deems necessary, §23-76-122.
Hospital and medical service corporations.
Annual report and examination, §23-75-114.
Industrial loan institutions.
Fees for examinations, §23-36-107.
State bank commissioner to examine, §23-36-105.
Insurance.
Captive insurance companies, §23-63-1608.
Farmers' mutual aid associations.
Applicable provisions, §23-73-114.
Holding companies.
Power of commissioner, §23-63-516.
Legal insurance.
Affairs of insurers, §23-91-220.
Life settlements.
Examination of licensees or applicants, §23-81-807.
Savings and loan associations.
Annual audit and examination procedure, §23-37-210.
Trust companies.
Assessments, §23-51-185.
Commissioner's duties, §23-51-184.
Offices, §23-51-181.
Timing, §23-51-185.
Voluntary liquidation, §23-51-159.

EXCHANGE OF CURRENCY.
Uniform money services act, §§23-55-101 to 23-55-1006.

EXCISE TAXES.
Charitable bingo and raffles.
Distributors of bingo equipment, §§23-114-601 to 23-114-606.

EXECUTION OF JUDGMENTS.
Fraternal benefit societies.
Benefits not liable to attachment, garnishment or other process, §23-74-403.
Lotteries.
Withholding from prizes, §23-115-403.
Railroads.
Livestock.
Killing or injuring.
Judgments under provisions, §23-12-906.

EXECUTORS AND ADMINISTRATORS.
Railroads.
Corporations.
Voting of stock, §23-11-212.

EYE CARE PROVIDERS.
Health insurance.
Primary eye care providers, §§23-99-301 to 23-99-305.

F

FAIR MORTGAGE LENDING ACT.
Mortgage bankers, brokers and servicers.
Licensing and regulation generally, §§23-39-501 to 23-39-518.

FARM CREDIT ACT OF 1971.
Financial institutions.
Bond issues.
Authorized investments, §23-32-201.

FARMERS' MUTUAL AID ASSOCIATIONS.
Agents.
Licensing, §23-73-121.
Amendments.
Articles or bylaws, §23-73-111.
Applicability of provisions, §§23-73-102, 23-73-104.
Articles of association, §23-73-106.
Amendment, §23-73-111.
Bylaws, §23-73-110.
Amendments, §23-73-111.
Certificates of authority.
Continuance, §23-73-113.
Qualifications, §23-73-112.
Suspension or revocation, §23-73-113.
Contracts.
Management and exclusive agency contracts, §23-73-115.
Conversion to mutual insurer, §23-73-117.
Coverage, §23-73-105.
Definitions, §23-73-101.
Dental plans.
Fees for noncovered services.
Agreement between insurers and dentists, §23-63-115.
Dissolution, §23-73-120.
Examinations.
Applicable provisions, §23-73-114.
Exclusive nature of provisions, §23-73-102.
Existing associations, §23-73-103.
Fees.
Payment of annual fees or charges.
Not required, §23-73-116.

FARMERS' MUTUAL AID ASSOCIATIONS —Cont'd
Formation.
Prohibited, §23-73-119.
Indemnification, §23-73-123.
Insurance, §§23-73-101 to 23-73-123.
Legal existence, §23-73-110.
Management and exclusive agency contracts, §23-73-115.
Membership, §§23-73-105, 23-73-118.
Requirements, §23-73-119.
Merger, §23-73-122.
Names.
Adoption of names, §23-73-107.
Organizations, §23-73-105.
Other provisions applicable, §23-73-104.
Scope of chapter, §23-73-102.
Transaction of business, §23-73-110.

FEDERAL AID.
Public service commission.
Certain loans not within jurisdiction of commission, §23-18-202.

FEES.
ATM'S, §23-32-208.
Shared terminals, §23-48-810.
Automatic teller machines, §23-32-208.
Shared terminals, §23-48-810.
Automobile clubs or associations.
Agents.
Licenses.
Annual license fee, §23-77-108.
Certificates of authority, §23-77-106.
Aviation.
Air commerce.
Transportation commission, §23-14-128.
Bank department.
Disposition, §23-46-209.
Sealed instruments, §23-46-203.
Banking board.
Applications, §23-46-404.
Banks.
Application to establish branches.
Filing fee, §23-48-703.
Automatic teller machines.
Shared terminals, §23-48-810.
Banking board.
Applications, §23-46-404.
Examinations, §23-46-509.
Interstate mergers and branching.
Collection and dispersal, §23-48-907.
Filing fee, §23-48-905.
Organization and incorporation.
Promoter's fees prohibited, §23-48-303.

FEES —Cont'd
Banks —Cont'd
Registered office and registered agent.
Filings under provisions, §23-48-327.
Bingo.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-203.
Broadband over power lines enabling act, §23-18-806.
Charitable bingo and raffle enabling act.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-203.
Continuing care providers.
Facility entrance fee.
Defined, §23-93-201.
Licensed application fees, §23-93-206.
Credit unions.
Examination by state credit union supervisor, §23-35-203.
Supervision fee.
Annual fee, §23-35-205.
Customer-bank communication terminals, §23-32-208.
Debit cards.
Usage fee, §23-32-208.
Electric cooperative corporations.
Annual license fee, §23-18-329.
Filing fees, §23-18-326.
Financial institutions.
Automatic teller machines, §23-32-208.
Fraternal benefit societies.
Licenses, §23-74-603.
Greyhound racing.
Franchises to conduct races, §23-111-305.
Health maintenance organizations.
State insurance department trust fund, fees to be paid as special revenues, §23-76-127.
Highways.
State highway and transportation department.
Schedule of fees, §23-2-314.
Hospital and medical service corporations.
Certificates of authority, §23-75-107.
Insurance department trust fund.
General provisions, §§23-61-701 to 23-61-711.
Legal insurance.
Payment to commissioner, §23-91-225.

FEES —Cont'd
Money services.
Currency exchange licenses.
Application, §23-55-402.
Renewal, §23-55-404.
Money transmission licenses.
Application, §23-55-202.
Renewal, §23-55-206.
Notice of change of control, §23-55-604.
Mortgage bankers, brokers and servicers.
Examination of business, §23-39-514.
Licenses, filing fee, §23-39-505.
Renewal of license, §23-39-506.
Motor carriers.
Annual fees charged carriers, §23-13-235.
Certificates of public convenience and necessity.
Application fee, §23-13-219.
Transfer, §23-13-232.
Exempt carriers.
Insurance filing fee, §23-13-265.
Permits.
Application fees, §23-13-223.
Transfer, §23-13-232.
Registration of carriers engaged in interstate commerce, §23-13-604.
Temporary authority, §23-13-229.
Motor vehicle dealers.
Auto auction fees.
Salvage-titled or parts-only titled vehicles, §23-112-614.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Pipelines.
Safety act.
Inspection fees, §23-15-214.
Portable electronics insurance.
Vendors.
Schedule of license fees, §23-88-507.
Professional employer organizations.
Employer service assurance organization affidavit, §23-92-414.
Licenses, §23-92-407.
Public service commission.
Schedule of fees, §23-2-314.
Public utilities.
Actions for fees brought in name of state, §23-1-109.
Annual fees charged utilities, §23-3-110.
Failure or refusal to pay.
Penalty, §23-3-110.

FEES —Cont'd
Public utilities —Cont'd
Annual fees charged utilities —Cont'd
Statement of fees due, §23-3-110.
Time for payment, §23-3-110.
Carriers, §§23-16-101 to 23-16-106.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Application fee, §23-18-512.
Public service commission.
Schedule of fees, §23-2-314.
Raffles.
Licenses.
Authorized organizations, §23-114-302.
Distributors and manufacturers, §23-114-307.
Railroads.
Annual fee collected from rail carriers, §23-16-104.
Carriers generally, §§23-16-101 to 23-16-106.
Corporations.
Amendment of articles of incorporation, §23-11-220.
Foreign corporations.
Fees charged foreign companies, §23-3-111.
Incorporation fees, §23-11-102.
Incorporation fees, §23-11-102.
Recreational vehicle franchises.
License, §23-112-1004.
Rural telecommunications cooperatives.
Enumerated, §23-17-226.
Membership fees, §23-17-216.
Savings and loan associations.
Collection by supervisor, §23-37-107.
Membership charges.
Prohibited, §23-37-405.
Securities regulation.
Registration statements, §23-42-404.
Telecommunications.
Initiation of residential telephone service.
Payments of fees in installments, §23-17-116.
Surcharges to provide communications for deaf and hearing impaired, §23-17-119.
Trust companies.
Acquisition.
Filing fee, §23-51-135.
Application for charter.
Filing fees, §23-51-106.
Examination assessment, §23-51-185.

FEES —Cont'd
Trustees.
Trustee of fiduciary fees, §23-51-194.
Video services.
Certificate of franchise authority issued by secretary of state, §23-19-204.
Video service provider fee, §23-19-206.

FENCES.
Railroads.
Removal of fences for public convenience, §23-12-308.
Notice to remove fence, §23-12-308.
Refusal to remove.
Penalty, §23-12-308.
Time allowed, §23-12-308.
Removal of fences.
Railroads, §23-12-308.

FERTILIZERS.
Pipelines.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture, §23-15-105.

FIDUCIARIES.
Health maintenance organizations.
Responsibilities of directors and officers, §23-76-111.
Insurance.
Licensees.
Fiduciary duties, §23-64-223.
Lotteries.
Retailers, fiduciary duties, §23-115-605.
Railroads.
Corporations.
Voting of stock, §23-11-212.
Savings and loan associations.
Savings accounts, §23-37-503.

FINANCE.
Money services act, §§23-55-101 to 23-55-1006.
Uniform money services act, §§23-55-101 to 23-55-1006.

FINANCE AND ADMINISTRATION DEPARTMENT.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

FINES.
Banks.
Embezzlement or misuse of funds, §23-50-105.
Bingo.
Charitable bingo and raffles enabling act violations, §23-114-104.

FINES —Cont'd
Bucket shops.
Commodities futures, §23-44-102.
Burial associations.
Failure to comply with provisions, §23-78-104.
Carriers.
Agreements to pay charge for additional mode of transportation, §23-10-109.
Charitable bingo and raffles enabling act violations, §23-114-104.
Commodities futures.
Bucket shops, §23-44-102.
Commodities futures violations, §23-44-102.
Credit unions.
False reports, §23-35-805.
Dog racing.
Failure to appear or testify at hearings, §23-111-205.
Failure to comply with franchise, §23-111-501.
Failure to pay tax, §23-111-513.
False affidavits of officers and directors, §23-111-406.
Improper wagering, §23-111-508.
Issuance of sales tax-free passes, §23-111-510.
Driving under the influence, §23-13-258.
Fraternal benefit societies.
Solicitations of membership, §23-74-703.
Fraud.
Insurance holding companies, §23-63-522.
Funeral benefits.
Sale of prepaid benefits, §23-40-106.
Health maintenance organizations.
Insolvency protection.
Hold harmless violations, §23-76-118.
Horse racing.
Compliance with license, §23-110-401.
Failure to pay tax, §23-110-415.
False applications for employment, §23-110-308.
Improper wagering, §23-110-405.
Issuance of sales tax-free passes, §23-110-411.
Insurance, §23-60-108.
Advertising by health and accident insurers and prepaid health plans, §23-66-316.
Certificates of authority.
Penalties for noncompliance, §23-63-201.

FINES —Cont'd
Insurance —Cont'd
Fraudulent insurance acts, §23-66-512.
Holding companies, §23-63-522.
Cease and desist orders.
Failure to obey, §23-63-529.
Material transactions disclosures, §23-63-1406.
Misrepresentation of other policies, §23-66-306.
Prescription drug benefits, §23-79-149.
Surplus lines insurance.
Failure to file quarterly statement or remit tax, §23-65-316.
Unauthorized insurance.
Cease and desist orders.
Failure to obey, §23-65-101.
Records produced on order.
Refusal to obey order, §23-65-104.
Life settlements.
Failure to file annual statement, §23-81-806.
Long-term care insurance.
Violations of act, §23-97-321.
Lotteries.
Minors purchasing tickets, §23-115-901.
Retailers, false statement on license application, §23-115-903.
Money services.
Civil penalties, §23-55-805.
Criminal penalties, §23-55-806.
Mortgage bankers, brokers and servicers.
Change in managing principal or branch manager.
Failure to give notice, §23-39-508.
Correcting amendment to information filed.
Failure to file, §23-39-511.
Loan officer's employment terminated.
Requirement, failure to give, §23-39-503.
Notice of change of location of office where files maintained.
Failure to give, §23-39-509.
Motor carriers, §23-13-257.
Alcoholic beverages.
Operation while consuming or under influence of, §23-13-258.
Operation without certificate or permit, §23-13-234.
Registration of carriers engaged in interstate commerce, §23-13-605.
Pipelines.
Civil penalties, §23-15-211.
Portable electronics insurance.
Violation of provisions, §23-88-505.
FINES —Cont'd
Prescription drug benefits.
Insurance, §23-79-149.
Professional employer organizations.
Penalties for violations, §23-92-412.
Property and casualty insurance guaranty.
Failure to pay assessments, §23-90-113.
Property insurance.
Willful violations by insurer, §23-88-204.
Public service commission, §23-2-409.
Railroads.
Access to railroad books by commissioners, §23-4-718.
Employee receiving extra pay for furnishing car to shipper, §23-10-429.
Express offices and delivery, §23-10-302.
Livestock or poultry.
Shipper's pass, §23-10-441.
Operation and maintenance.
Blocks in frogs and guardrails, §23-12-512.
Discharge of firearms or throwing objects, §23-12-804.
Equipment on track motor cars, §23-12-404.
Establishment, discontinuance or modification of service, §23-12-609.
Headlights, §23-12-402.
Hospital facilities provided in state, §23-12-508.
Lights on switches, §23-12-408.
Maintenance of right-of-way, §23-12-201.
Repairs to cars, §23-12-407.
Stopping train within town limits, §23-12-606.
Telephone and telegraph operator duty hours, §23-12-510.
Trespassers boarding trains, §23-12-802.
Unsafe tracks, bridges, etc., §23-12-103.
Rates and charges, §23-4-605.
Safe transportation of railroad employees by contract carriers.
Penalties for violations, §23-16-510.
Schedule of rates, §23-4-604.
Risk-based capital act.
Violations of provisions, §23-63-1314.
Health organizations, §23-63-1513.

FINES —Cont'd
Savings and loan associations.
Cease and desist orders.
Failure to obey, §23-37-212.
Securities regulations.
Commissioner.
Enforcement of act by injunction and ancillary remedies, §23-42-209.
Violations of subchapter, §23-42-308.
Title insurance.
Disciplinary actions and other penalties, §23-103-416.

FINGERPRINTS.
Charitable bingo and raffles.
Authorized organizations.
Criminal background checks, §23-114-303.
Greyhound racing.
Criminal background checks.
Owners and trainers, §23-111-203.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Horse racing.
Criminal background checks.
Horse owners, trainers, jockeys and jockey agents, §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Mortgage bankers, brokers and servicers.
Licensure, §23-39-505.

FIREARMS AND OTHER WEAPONS.
Railroads.
Discharging firearms at cars.
Penalty, §23-12-804.

FIRE PROTECTION DISTRICTS.
Insurance.
Rate credit on risks.
Legislative findings and intent, §23-88-103.
Only for persons who pay dues and subscription payments to district, §23-88-103.
Rural fire protection districts, §23-88-103.
Rural volunteer fire departments.
Rate credit on risks, §23-88-103.

FIRE PROTECTION DISTRICTS —Cont'd
Insurance —Cont'd
Rural volunteer fire departments —Cont'd
Response to fire.
Insurer required to pay reasonable costs of services from insurance proceeds, §23-88-102.
Written and signed release from fire chief required prior to disbursing remaining proceeds, §23-88-102.
Rural fire protection service.
Insurance.
Rate credit on risks.
Legislative intent, §23-88-103.
Prerequisites to granting, §23-88-103.
Response to fire.
Insurer required to pay reasonable costs of services from insurance proceeds, §23-88-102.
Written and signed release from fire chief required prior to disbursing remaining proceeds, §23-88-102.

FIRES AND FIRE PREVENTION.
Insurance.
Fire loss reporting act.
Property insurance, §§23-88-401 to 23-88-405.
Rating plans, fire protection impact statement, §23-88-104.
Railroads.
Liability for fires, §23-12-913.

FOOD.
Medically necessary food or low protein modified food products.
Children with phenylketonuria.
Definitions, §23-79-701.
Health insurance coverage, §23-79-703.
Income tax credit for individual or family of child, §23-79-702.

FORCIBLE ENTRY AND DETAINER.
Bonds, surety.
Exemption for banks, §23-48-106.
Financial institutions.
Surety bond exemptions, §23-32-305.

FORECLOSURES.
Bonds, surety.
Exemption form banks, §23-48-106.
Financial institutions.
Surety bond exemption, §23-32-305.

FOREIGN COUNTRIES.
Banks and financial institutions.
Branches in foreign countries or dependencies, §23-48-702.

FOREIGN HEALTH ORGANIZATIONS.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.

FOREIGN INVESTOR COMPANIES, §§23-32-401 to 23-32-406.
Applicability.
Corporations, §23-32-402.
Transactions, §23-32-403.
Authority to sue and be sued, §23-32-405.
Defined, §23-32-401.
"Engaging in business."
Transactions excluded, §23-32-403.
General business of chartered banks.
Unauthorized transactions, §23-32-406.
Secretary of state.
Service of process.
Authority to sue and be sued, §23-32-405.
Consent to service from secretary, §23-32-404.
Service of process.
Consent to service from secretary of state, §23-32-404.
Authority to sue and be sued, §23-32-405.
Unauthorized transactions, §23-32-406.

FORFEITURES.
Futures.
Penalties for violations of provisions, §23-44-102.

FORMS.
Agents.
Certificates of deposit.
Agency designation, §23-47-303.
Banks.
Certificates of deposit.
Agency designation, §23-47-303.
Certificates of deposit.
Agency designation, §23-32-503.
Financial institutions.
Designation of agent on certificates of deposit, §23-32-503.

FORMS —Cont'd
Power of attorney.
Agency designation on certificates of deposit, §23-32-503.
Public utilities.
Filling out and returning, §23-3-112.
Securities regulation.
Commissioner.
Rules, forms and orders of commissioner, §23-42-204.

FRANCHISES.
Public utilities.
Municipal franchises.
Violations.
Damages, §23-3-116.
Penalties, §23-3-116.
Recreational vehicle dealers, §§23-112-1001 to 23-112-1023.

FRATERNAL BENEFIT SOCIETIES, §§23-74-101 to 23-74-705.
Actions.
Indemnification or reimbursement of persons threatened by, §23-74-203.
Adult membership.
Minimum age, §23-74-201.
Amendments to laws, §23-74-302.
Benefit contracts.
Binding and controlling, §23-74-404.
Annuities.
Contractual benefits provided by societies, §23-74-401.
Appeals.
Decisions and findings of commissioner of insurance.
Review of, §23-74-702.
Applicability of other code provisions, §23-74-705.
Articles of incorporation.
Bonds, surety.
Applicants for incorporation, §23-74-301.
Contents requirements, §23-74-301.
Filing, §23-74-301.
Foreign or alien societies.
Filing prior to transacting business in state, §23-74-605.
Organization generally, §23-74-301.
Assets.
Held, invested and disbursed for use and benefit of society, §23-74-502.
Assignments.
Benefit contracts, §23-74-404.
Attachment.
Benefits not attachable, §23-74-403.
Attorney general.
Injunctions.
Domestic societies.
Commencing action, §23-74-606.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Attorney general —Cont'd
Injunctions —Cont'd
Recognition of proceedings.
Application or petition made by attorney general upon request of commissioner, §23-74-608.
Benefit contracts, §23-74-404.
Amendments to laws.
Binding and controlling, §23-74-404.
Annuity benefits.
Contractual benefits provided by societies, §23-74-401.
Assignment.
Terms and conditions, §23-74-404.
Attachment.
Benefits not liable to, §23-74-403.
Beneficiaries, §23-74-402.
Assets.
Prohibited from acquiring individual rights in, §23-74-502.
Changing beneficiaries, §23-74-402.
Designating, §23-74-402.
Cash surrender values, §23-74-405.
Certificates.
Defined, §23-74-104.
Issuance, §23-74-404.
Requirements, §23-74-404.
Standards for valuation, §23-74-601.
Valuation, §23-74-601.
Contractual benefits provided by societies, §23-74-401.
Coverage.
Societies to specify persons covered by contractual benefits, §23-74-401.
Death benefits.
Contractual benefits provided by societies, §23-74-401.
Defined, §23-74-104.
Disability benefits.
Temporary or permanent disability benefits.
Contractual benefits provided by societies, §23-74-401.
Endowment benefits.
Contractual benefits provided by societies, §23-74-401.
Funeral benefits.
Provision for payment of, §23-74-402.
Garnishment.
Benefits not liable to, §23-74-403.
Generally, §23-74-404.
Hospital, medical or nursing benefits.
Contractual benefits provided by societies, §23-74-401.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Benefit contracts —Cont'd
Laws.
Amendments.
Binding and controlling, §23-74-404.
Liability.
Benefits not liable to attachment, garnishment or other process, §23-74-403.
Life insurers.
Benefits authorized for life insurers.
Contractual benefits provided by societies, §23-74-401.
Loans.
Certificate loans, §23-74-405.
Minors.
Issuance of contract prior to attaining age of majority.
Bound by term, §23-74-404.
Monument or tombstone benefits.
Contractual benefits provided by societies, §23-74-401.
Nonforfeiture benefits, §23-74-405.
Personal representatives.
Payment of benefits to, §23-74-402.
Terms and conditions, §23-74-404.
Valuation of certificates.
Standards of, §23-74-601.
Benefit members.
Defined, §23-74-104.
Bonds, surety.
Articles of incorporation.
Applicants for incorporation, §23-74-301.
Certificates of authority.
Issuance, §23-74-301.
Preliminary certificates, §23-74-301.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Consolidation, §23-74-305.
Contracts.
Consolidation or merger, §23-74-305.
Conversion into mutual life insurance companies, §23-74-306.
Death.
Contractual benefits provided by societies.
Death benefits, §23-74-401.
Definitions, §23-74-101.
Generally, §23-74-104.
Lodge system, §23-74-102.
Representative form of government, §23-74-103.
Diabetes coverage, §§23-79-601 to 23-79-607.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Disabilities.
Contractual benefits provided by societies.
Temporary or permanent disability benefits, §23-74-401.
Domestic societies.
Consolidation or merger, §23-74-305.
Conversion into mutual life insurance companies, §23-74-306.
Deficiencies.
Hearings, §23-74-606.
Injunctions, liquidation or receivership, §23-74-606.
Notice, §23-74-606.
Examination, §23-74-604.
Exemptions of certain societies, §23-74-704.
Hearings.
Injunctions, liquidation or receivership, §23-74-606.
Injunctions.
Grounds, §23-74-606.
Procedures, §23-74-606.
Liquidation.
Grounds, §23-74-606.
Procedure, §23-74-606.
Notice.
Deficiencies, §23-74-606.
Hearings.
Injunctions, liquidation or receivership, §23-74-606.
Organization.
Generally, §23-74-301.
Receivership.
Grounds, §23-74-606.
Procedure, §23-74-606.
Elections.
Officers of society, §23-74-103.
Supreme governing body.
Eligibility of members to vote, §23-74-103.
Endowments.
Contractual benefits provided by societies.
Endowment benefits, §23-74-401.
Examination of societies, §23-74-604.
Executions.
Benefits not liable to attachment, garnishment or other process, §23-74-403.
Exemptions from general insurance laws, §23-74-503.
Exemptions of certain societies, §23-74-704.
Fees.
Licenses, §23-74-603.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Foreign or alien societies.
Admission to state, §23-74-605.
Amendments to laws.
Filing, §23-74-302.
Articles of incorporation.
Filing prior to transacting business in state, §23-74-605.
Examination, §23-74-604.
Investments, §23-74-501.
Licenses.
Notice.
Suspension, revocation or refusal, §23-74-607.
Required to transact business in state, §23-74-605.
Suspension, revocation or refusal.
Grounds, §23-74-607.
Notice, §23-74-607.
Procedure, §23-74-607.
Notice.
Licenses.
Suspension, revocation or refusal, §23-74-607.
Qualifications.
Admission to state, §23-74-605.
Fraud.
Penalties.
Fraudulent statements, §23-74-703.
Funds generally, §23-74-502.
Funerals.
Contractual benefits.
Payment of funeral benefits, §23-74-402.
Garnishment.
Benefits not liable to garnishment, §23-74-403.
Hearings.
Domestic societies.
Injunctions, liquidation or receivership, §23-74-606.
Examination of societies.
Opportunity to respond before findings made public, §23-74-604.
Hospital, medical or nursing benefits.
Contractual benefits provided by societies, §23-74-401.
Indemnification.
Persons indemnified and reimbursed by societies, §23-74-203.
Injunctions.
Domestic societies.
Grounds, §23-74-606.
Procedures, §23-74-606.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Injunctions —Cont'd
Recognition of proceedings.
Application or petition required to be made by attorney general, §23-74-608.
Institutions.
Not-for-profit institutions.
Created, maintained and operated by, §23-74-303.
Insurance.
Directors, officers, employees or agents.
Powers to purchase on behalf of, §23-74-203.
General insurance laws.
Exemptions from, §23-74-503.
Life insurers.
Contractual benefits provided by societies.
Benefits as authorized for life insurers, §23-74-401.
Mutual life insurance companies.
Conversion into, §23-74-306.
Reinsurance, §23-74-304.
Investments.
Authorized investments, §23-74-501.
Funds, §23-74-502.
Laws.
Amendments, §23-74-302.
Benefit contracts.
Amendments.
Binding and controlling, §23-74-404.
Defined, §23-74-104.
Waiver, §23-74-204.
Liability.
Benefits.
Attachment, garnishment or other process.
Benefits not liable for, §23-74-403.
Supreme governing body.
Officers and members.
Not personally liable for benefits provided, §23-74-203.
Licenses.
Agents, §23-74-609.
Exceptions to requirement, §23-74-609.
Fees, §23-74-603.
Foreign or alien societies.
Required for transacting business in state, §23-74-605.
Suspension, revocation or refusal.
Grounds, §23-74-607.
Notice, §23-74-607.
Procedure, §23-74-607.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Licenses —Cont'd
Notice.
Foreign or alien societies.
Suspension, revocation or refusal, §23-74-607.
Renewal, §23-74-603.
Suspension, revocation or refusal.
Foreign or alien societies, §23-74-607.
Transacting business in state.
Required for, §23-74-603.
Liquidation.
Domestic societies.
Grounds, §23-74-606.
Procedure, §23-74-606.
Loans.
Benefit contracts.
Certificate loans, §23-74-405.
Lodges.
Defined, §23-74-104.
Lodge system, §23-74-102.
Children.
Organizing and operating lodges for children, §23-74-102.
Subordinate lodges.
Meetings.
Required to hold regular meeting, §23-74-102.
Meetings.
Supreme governing body.
Where held, §23-74-202.
Membership.
Adult membership.
Minimum age, §23-74-201.
Age.
Adult membership.
Minimum age, §23-74-201.
Assets.
Members prohibited from acquiring individual rights, §23-74-502.
Classes.
Eligibility standards.
Provided for in laws or rules, §23-74-201.
Consolidations or mergers.
Text furnished to, §23-74-305.
Conversion into mutual life insurance companies.
Vote required, §23-74-306.
Grievance or complaint procedures.
Providing in laws or rules for, §23-74-202.
Qualifications, §23-74-201.
Rights in society.
Personal to members and not assignable, §23-74-201.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Membership —Cont'd
Social members, §23-74-201.
Merger, §23-74-305.
Minors.
Benefit contracts.
Issuance prior to attaining age of majority.
Bound by terms, §23-74-404.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Lodge system.
Organizing and operating lodges for children, §23-74-102.
Mutual life insurance companies.
Conversion into, §23-74-306.
Not-for-profit institutions.
Created, maintained and operated by societies, §23-74-303.
Notice.
Consolidations and mergers, §23-74-305.
Domestic societies.
Deficiency or deficiencies, §23-74-606.
Hearings.
Injunctions, liquidation or receivership, §23-74-606.
Examination of societies.
Opportunity to respond to before findings made public, §23-74-604.
Foreign or alien societies.
Licenses.
Suspension, revocation or refusal.
Notice of deficiency, §23-74-607.
Publication.
Required notice, §23-74-202.
Offices.
Domestic societies.
Location, §23-74-202.
Organization.
Generally, §23-74-301.
Other code provisions.
Applicability of, §23-74-705.
Penalties.
Generally, §23-74-703.
Reports.
Failure to file required reports, §23-74-602.
Personal representatives.
Contractual benefits.
Payment of benefits to, §23-74-402.
Powers.
Generally, §23-74-105.
Premiums.
Defined, §23-74-104.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Publication.
Notices.
Required notices, §23-74-202.
Purposes, §23-74-105.
Receivers.
Domestic societies.
Receivership of domestic societies.
Grounds, §23-74-606.
Procedure, §23-74-606.
Records.
Certificates of authority, §23-74-301.
Registered agent.
Service of process, §23-74-701.
Reinsurance, §23-74-304.
Reports.
Required reports, §23-74-602.
Failure to file.
Penalties, §23-74-602.
Representative form of government, §23-74-103.
Liability of officers and members of supreme governing body.
Not personally liable for benefits provided, §23-74-203.
Officers of societies.
Election, §23-74-103.
Liability.
Not personally liable for benefits provided, §23-74-203.
Supreme governing body.
Consolidations and mergers.
Duties, §23-74-305.
Conversion into mutual life insurance companies.
Vote required, §23-74-306.
Election to body.
Eligibility of members to vote, §23-74-103.
How constitutes, §23-74-103.
Liability.
Not personally liable for benefits provided, §23-74-203.
Meetings.
Where held, §23-74-202.
Rules.
Defined, §23-74-104.
Service of process.
Registered agent, §23-74-701.
Taxation.
Exemptions from taxation, §23-74-504.
Trade practices act.
Subject to, §23-74-610.
Unfair methods of competition and unfair and deceptive acts and practices, §23-74-610.

FRATERNAL BENEFIT SOCIETIES —Cont'd
Valuation.
Benefit contracts.
Certificates.
Standards of valuation, §23-74-601.
Violations of chapter.
Penalties generally, §23-74-703.
Waiver.
Laws of societies, §23-74-204.

FRAUD.
Fraternal benefit societies.
Penalties.
Fraudulent statements, §23-74-703.
Health insurance.
Annual report by commissioner, §23-61-116.
Life settlements.
Fraudulent settlement acts enumerated, §23-81-813.
Prevention and control, §23-81-814.
Lotteries.
False statement by retailer on license application, §23-115-903.
Oversight functions of commission, §23-115-206.
Penalties, §23-115-902.
Prizes not to be awarded, §23-115-403.
Motor vehicle liability insurance.
Defrauding secured creditor.
Unauthorized use of proceeds, §23-89-216.
Securities regulation.
Securities fraud.
Criminal penalty for violations, §23-42-104.
Unlawful acts by investment advisers, §23-42-307.
Unlawful false or misleading statements, §23-42-110.

FRAUDULENT INSURANCE ACTS, §§23-66-501 to 23-66-513.

FREEDOM OF CHOICE OF HEALTH CARE PROVIDERS BY PATIENTS, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.

FRIVOLOUS ACTIONS.
Lotteries.
Administrative orders of commission, appealing, §23-115-209.

FUNDRAISERS.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

FUNDS TRANSFERS.
Money services act, §§23-55-101 to 23-55-1006.
Uniform money services act, §§23-55-101 to 23-55-1006.

FUNERALS.
Definitions.
Prepaid funeral services, §23-40-103.
Fraternal benefit societies.
Contractual benefits.
Payment of funeral benefits, §23-74-402.
Prepaid funeral services, §§23-40-101 to 23-40-126.
Administration of chapter, §23-40-108.
Employment of personnel, §23-40-108.
Bankruptcy.
Notice, §23-40-117.
Burial associations.
Exemptions, §23-40-105.
Cancellation of contract, §23-40-122.
Changes of ownership.
Approval, §23-40-113.
Liability of transferor, §23-40-113.
Waiver of requirement, §23-40-113.
Citation of act.
Short title, §23-40-101.
Compliance with act required, §23-40-124.
Contracts.
Cancellation, §23-40-122.
Designation of agent for depositing proceeds, §23-40-118.
Failure to deliver proceeds to agent, §23-40-118.
Requirements, §23-40-112.
Deadline.
Compliance with act, §23-40-124.
Definitions, §23-40-103.
Delinquency proceedings, §23-40-123.
Deposits.
Contract proceeds.
Designation of agent, §23-40-118.
Division of prepaid funeral benefits, §23-40-107.
Enforcement.
Delinquency proceedings, §23-40-123.
Exemptions.
Burial association, §23-40-105.
Generally, §23-40-104.
Fees.
Permits.
Application fees, §23-40-110.
Records.
Examination fees, §23-40-120.

FUNERALS —Cont'd
Prepaid funeral services —Cont'd
Fees —Cont'd
Reports.
Filing fees, §23-40-119.
Insurance commissioner.
Regulation of sale of prepaid benefits, §23-40-107.
Investigations.
Insurance department criminal investigation division, §23-40-106.
Life insurance policy or annuity on contract.
Procurement by seller, notice to purchaser, §23-40-112.
Penalties.
Violation of act, §23-40-106.
Permits.
Applications.
Fees, §23-40-110.
Initial or renewed permit, §23-40-110.
Cancellation, §23-40-111.
Denial, §23-40-111.
Issuance, §23-40-111.
Renewal.
Refusal to renew, §23-40-111.
Required, §23-40-109.
Sale without permit prohibited, §23-40-109.
Statement of net worth, §23-40-110.
Prepaid funeral contracts recovery program fund, §23-40-125.
Purpose of act, §23-40-102.
Records.
Examination, §23-40-120.
Fees, §23-40-120.
Required, §23-40-120.
Reports.
Annual report, §23-40-119.
Fees, §23-40-119.
Rules and regulations.
Promulgation, §23-40-108.
Short title, §23-40-101.
Trust funds.
Cancellation of contract, §23-40-122.
Created, §23-40-114.
Deposits, §23-40-114.
Disbursal, §23-40-116.
Exemption from attachment, garnishment, etc., §23-40-117.
Investments, §23-40-115.
Suspension or prohibition of disbursement, §23-40-114.
Withdrawals, §23-40-114.
Unfair competition or deceptive acts prohibited, §23-40-126.
FUNERALS —Cont'd
Prepaid funeral services —Cont'd
Violation of act.
Penalties, §23-40-106.

FUTURES.
Advances.
Recovery, §23-44-104.
Bucket shops.
Contracts.
Certain contracts null and void, §23-44-105.
Maintenance prohibited, §23-44-106.
Name and location.
Furnished upon demand, §23-44-109.
Prohibited, §23-44-106.
Cotton.
Contracts.
Validity of contracts relating to cotton, §23-44-103.
Definitions, §23-44-101.
Exchanges and boards of trade.
Authorized, §23-44-107.
Contracts.
Transmission of contracts, §23-44-108.
Inspection of books, §23-44-107.
Number of members, §23-44-107.
Organization, §23-44-107.
Private or public wires.
Transmission of contracts, §23-44-108.
Use to secure market quotations, §23-44-108.
Forfeitures.
Penalties for violations of provisions, §23-44-102.
Penalties.
Violations of provisions, §23-44-102.

G

GAG CLAUSES.
Health insurance.
Prohibition, §23-99-407.

GAMBLING.
Bingo and raffles.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.
Compulsive gambling disorder, treatment and education programs.
Lottery commission, §23-115-410.
Lotteries.
Lottery fraud, §23-115-902.
Pari-mutuel wagering.
Greyhound racing, §23-111-508.

GAMBLING —Cont'd
Pari-mutuel wagering —Cont'd
Horse racing, §23-110-405.
Raffles and bingo.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

GARNISHMENT.
Bonds, surety.
Exemption for banks, §23-48-106.
Financial institutions.
Surety bond exemption, §23-32-305.
Fraternal benefit societies.
Benefits not liable to garnishment, §23-74-403.
Insurance.
Delinquency proceedings.
Assets, §23-68-120.
Lotteries.
Withholding from prizes, §23-115-403.

GASTRIC BYPASS SURGERY.
Health insurance.
Gastric pacemakers.
Required coverage, §23-99-419.

GENERAL ASSEMBLY.
House of representatives.
Lottery bills.
Fiscal impact statement, §23-115-104.
Lottery bills.
Fiscal impact statement, §23-115-104.
Lottery commission legislative oversight committee, §§23-115-1101, 23-115-1102.
Reports to committee, §23-115-206.
Director, §23-115-302.
Railroads.
Passes.
Members permitted to accept and use passes, §23-4-804.

GENERATION AND TRANSMISSION COOPERATIVES, §§23-4-1101 to 23-4-1107.

GENETIC INFORMATION DISCLOSURE PROTECTION.
Insurance.
Genetic nondiscrimination in insurance act, §23-66-320.

GENETIC NONDISCRIMINATION IN INSURANCE ACT, §23-66-320.

GIFTS.
Hospital and medical service corporations.
Power to make donations for the public welfare, §23-75-121.

GIFTS —Cont'd
Lotteries.
Gifts from retailers, §23-115-601.
Gifts from vendors, §23-115-501.

GLOBAL POSITIONING SYSTEMS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

GO KARTS.
Insurance for amusements, §§23-89-501 to 23-89-518.

GOVERNOR.
Railroads.
Passes.
Permitted to accept and use pass, §23-4-804.
Police.
Approval of appointment, §23-12-701.

GPS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

GRANTS.
Telecommunications.
Extension of services to citizens not served by wire line, §23-17-404.

GREYHOUND RACING.
Additional racing days, §§23-111-505, 23-111-515.
Admission tax, §23-111-510.
Affidavits.
Residence of officers and directors of franchise holders, §23-111-406.
Penalty for false affidavit, §23-111-406.
Appeals.
Franchises to conduct races.
Refusal to grant temporary franchise, §23-111-302.
Applicability of provisions.
Nonapplicability to other methods or forms of racing, §23-111-102.
Bonds, surety.
Franchise holders, §23-111-514.
Citation of law.
Short title, §23-111-101.
Community colleges.
Racing meets.
Use of revenue derived from additional racing days, §23-111-515.
Conflicts of interest.
Racing commission.
Persons prohibited from membership, §23-111-202.
Criminal history information and background.
Owners and trainers, §23-111-203.

GREYHOUND RACING —Cont'd
Criminal history information and background —Cont'd
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Electronic means.
Wagering.
Patrons with money on deposit placing wager by, §23-111-508.
Employees.
Health insurance.
Proceeds from wagering to fund, §23-111-516.
Fees.
Franchises to conduct races, §23-111-305.
Licenses.
Disposition of license fees, §23-111-104.
Racing meets, §23-111-506.
Franchises to conduct races.
Appeals.
Refusal to grant temporary franchise, §23-111-302.
Applications for, §23-111-302.
Additional information, §23-111-404.
Deposit to accompany, §23-111-302.
Bonds, surety.
Franchise holder, §23-111-514.
Construction of racing plant, §23-111-305.
Elections.
Approval of electors required, §23-111-303.
Ballots, §23-111-304.
Conduct of elections, §23-111-304.
Contests, §23-111-304.
Generally, §23-111-304.
Notice, §23-111-304.
Subsequent elections, §23-111-306.
Employees of franchise holders.
Health insurance.
Proceeds from wagering to fund, §23-111-516.
Restrictions concerning, §23-111-308.
Fee, §23-111-305.
Granted prior to July 1, 1957, §23-111-307.
Granting, §23-111-203.
Approval of electors required, §23-111-303.
Limitations on issuance, §23-111-301.
Health insurance for franchise holder's employees, §23-111-516.
Hearing on application, §23-111-302.
GREYHOUND RACING —Cont'd
Franchises to conduct races —Cont'd
Number of franchises.
Limitations, §23-111-301.
Officers, directors and shareholders of franchise holder.
Additional information in application for franchise, §23-111-404.
Changes in management personnel and ownership of stock.
Franchise holders to report, §23-111-407.
Grounds for refusing franchise, §23-111-405.
Investigations.
Considerations, §23-111-405.
Cooperation with federal and state officers and agencies, §23-111-408.
Power of commission, §23-111-405.
Special investigators, §23-111-409.
Legislative declaration, §23-111-401.
Principal stockholder.
Defined, §23-111-402.
Purpose of provisions, §23-111-401.
Residence requirement for officers and directors, §23-111-406.
Affidavit, §23-111-406.
Penalty for false affidavit, §23-111-406.
Supplemental nature of provisions, §23-111-403.
Racing meets.
Racing meets to be held only in accordance with franchises, §23-111-501.
Refusal of temporary franchise.
Grounds, §23-111-405.
Required, §23-111-501.
Temporary franchise, §23-111-302.
Greyhound owners.
Criminal background checks, §23-111-203.
Greyhound trainers.
Criminal background checks, §23-111-203.
Health insurance for franchise holder's employees, §23-111-516.
Hearings.
Franchises to conduct races.
Hearing on application, §23-111-302.
Racing commission, §23-111-205.
Indigent persons.
Racing meetings.
Additional racing days.
Use of revenue derived from, §23-111-505.

GREYHOUND RACING —Cont'd
Investigations.
Officers, directors and shareholders of franchise holders, §§23-111-405, 23-111-409.
Legalized, §23-111-301.
Licenses.
Fees.
Disposition of license fees, §23-111-104.
Racing meets, §23-111-506.
Greyhound owners.
Criminal background checks, §23-111-203.
Greyhound trainers.
Criminal background checks, §23-111-203.
Racing meets, §23-111-506.
Application for, §23-111-506.
Fees, §23-111-506.
Required, §23-111-506.
Minors.
Employment by franchise holders.
Prohibited, §23-111-308.
Patrons at race tracks.
Prohibited, §23-111-308.
Wagering.
Prohibited, §23-111-508.
Municipalities.
Racing meets.
Small municipalities.
Use of revenue derived from additional racing days, §23-111-515.
Notice.
Franchises to conduct races.
Elections, §23-111-304.
Passes.
Distribution, §23-111-105.
Maximum number, §23-111-105.
Penalties.
Conducting racing meet other than in accordance with franchise, §23-111-501.
Disposition of fines, §23-111-104.
Nonpayment of taxes by franchise holders, §23-111-513.
Residence requirement for officers and directors of franchise holders.
False affidavit as to, §23-111-406.
Subpoenas of racing commission.
Noncompliance, §23-111-205.
Wagering.
Methods other than pari-mutuel or certificate method, §23-111-508.
Racing commission.
Construction of references to "commission," §23-111-201.

GREYHOUND RACING —Cont'd
Racing commission —Cont'd
Duties, §23-111-203.
Hearings, §23-111-205.
Persons prohibited from membership, §23-111-202.
Powers, §23-111-203.
Right of entry, §23-111-512.
Rules and regulations, §23-111-204.
Wagering on electronic games of skill, §§23-113-301 to 23-113-304.
Racing days.
Additional racing days.
Benefit of small municipalities and community colleges, §23-111-515.
Disaster victims, indigent persons and educational purposes, §23-111-505.
Purposes for which held, §23-111-505.
Racing days and hours, §23-111-502.
Racing meets.
Additional racing days.
Distribution of net proceeds to municipalities, §23-111-504.
Purposes for which held, §23-111-505.
Rules and regulations, §23-111-503.
Small municipalities and community colleges, §23-111-515.
Admission tax, §23-111-510.
Community colleges.
Additional racing days.
Use of revenue derived from, §23-111-515.
Easter Sunday or Christmas day.
Racing on prohibited, §23-111-502.
Franchises to conduct races.
Racing meets to be held only in accordance with franchises, §23-111-501.
Indigent persons.
Additional racing days.
Use of revenue derived from, §23-111-505.
Licenses, §23-111-506.
Application for, §23-111-506.
Fees, §23-111-506.
Required, §23-111-506.
Racing days and hours, §23-111-502.
Small municipalities.
Additional racing days.
Use of revenue derived from, §23-111-515.
Racing passes.
Distribution, §23-111-105.
Maximum number, §23-111-105.

GREYHOUND RACING —Cont'd
Records.
Franchise holders, §23-111-511.
Amount of moneys wagered, §23-111-509.
Racing commission to have access, §23-111-512.
Rules and regulations.
Racing commission, §23-111-204.
Subpoenas.
Powers of racing commission, §23-111-205.
Taxation.
Admission tax, §23-111-510.
Disposition of revenue, §23-111-517.
Disposition of taxes, §23-111-104.
Telephone or mobile device.
Patrons with money on deposit placing wager by, §23-111-508.
Title of law.
Short title, §23-111-101.
Wagering.
Disposition of moneys wagered, §23-111-509.
Health insurance for employees, §23-111-516.
Electronic games of skill, §§23-113-101 to 23-113-604.
Electronic means.
Patrons with money on deposit placing wager by, §23-111-508.
Felonies.
Methods other than pari-mutuel or certificate method, §23-111-508.
Minors.
Betting by.
Prohibited, §23-111-508.
Pari-mutuel or certificate method.
Authorized at licensed tracks, §23-111-508.
Penalties.
Methods other than pari-mutuel or certificate method, §23-111-508.
Simultaneously televised horse or greyhound races, §23-111-508.
Statutes prohibiting betting on racing.
Inapplicable, §23-111-103.
Telephone or mobile devices.
Patrons with money on deposit placing wager by, §23-111-508.
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.
Arkansas thoroughbred and greyhound breeding activities.
Contributions to purses and promotion of, §23-113-401.
Citation of act, §23-113-102.

GREYHOUND RACING —Cont'd
Wagering on electronic games of skill —Cont'd
Conditions and limitations, §23-113-201.
Conflict of laws, §23-113-602.
Contributions to purses and promotion of Arkansas thoroughbred and greyhound breeding activities, §23-113-401.
Criminal background checks.
Employees and suppliers, §23-113-303.
Definitions, §23-113-103.
Licenses.
Employees and suppliers, §23-113-303.
Fees, penalties and fines, disposition of, §23-113-604.
Local option election.
Authorization subject to approval by, §23-113-201.
Pari-mutuel wagering, §23-113-603.
Privilege fees.
Disposition, §23-113-604.
Payment in lieu of taxes, §23-113-501.
Public policy, §23-113-101.
Racing commission, §§23-113-301 to 23-113-304.
Adverse commission action, §23-113-304.
Hearings, §23-113-304.
Jurisdiction, §23-113-301.
Licenses for employees and suppliers, §23-113-303.
Powers and duties, §23-113-302.
Recordkeeping requirements, §23-113-601.
Title of act, §23-113-102.
Witnesses.
Powers of racing commission as to, §23-111-205.

GRIEVANCE SYSTEMS.
Managed health care plans, §§23-99-701 to 23-99-706.

GROSS RECEIPTS TAX.
Banks.
Applicability, §23-48-101.
Financial institutions.
Savings and loan institutions.
Applicability of provisions, §23-37-108.
Greyhound racing.
Wagering on electronic games of skill.
Privilege fees in lieu of taxes, §23-113-501.

GROSS RECEIPTS TAX —Cont'd
Horse racing.
Wagering on electronic games of skill.
Privilege fees in lieu of taxes, §23-113-501.
Savings and loan associations.
Applicability of provisions, §23-37-108.

GROUP LIFE INSURANCE AND ANNUITIES, §§23-83-101 to 23-83-126.
Assignment of rights, §23-83-125.
Insurer.
Protection of insurer's rights, §23-83-126.
Association groups, §23-83-106.
Authorized insurers.
Placement, §23-83-123.
Conversion right.
Notice, §23-83-122.
Credit union groups, §23-83-105.
Debtor groups, §23-83-105.
Delivery of certificate to insured debtors, §23-83-121.
Employee groups, §23-83-102.
Group requirements, §23-83-101.
Group types, §§23-83-102 to 23-83-106.
Incontestability provision, §23-83-111.
Insurability provisions, §23-83-113.
Insurers.
Assignment of rights.
Protection of insurer's rights, §23-83-126.
Authorized insurers, §23-83-123.
Unauthorized insurers, §23-83-124.
Labor union groups, §23-83-103.
Placement with authorized insurers, §23-83-123.
Policy.
Age provision, §23-83-114.
Continuation of coverage during disability, §23-83-120.
Conversion on termination of eligibility, §§23-83-117, 23-83-118.
Conversion on termination of eligibility provision, §23-83-117.
Copy of application attached, §23-83-112.
Death pending conversion, §23-83-119.
Issuance of certificate to policyholder, §23-83-116.
Payment of benefits, §23-83-115.
Payment of benefits provision, §23-83-115.
Provisions, §§23-83-109 to 23-83-121.
Required provisions, §23-83-109.
Premiums.
Grace period for payment, §23-83-110.

GROUP LIFE INSURANCE AND ANNUITIES —Cont'd
Restrictions on coverage.
Certain groups, §23-83-107.
Spouses and dependent children, §23-83-108.
Trustee groups, §23-83-104.
Unauthorized insurers, §23-83-124.

GUARDIAN AND WARD.
Railroads.
Corporations.
Voting of stock, §23-11-212.

GUIDES.
Health insurance marketplace navigators, guides, certified application counselors.
Licenses, §§23-64-601 to 23-64-614.

GYNECOLOGICAL SERVICES.
Health insurance.
Required coverage, §23-99-406.

H

HABITUAL OR REPEAT OFFENDERS.
Used motor vehicle buyers protection, §23-112-603.

HANDHELD GAMING DEVICES.
Portable electronics insurance, §§23-88-501 to 23-88-507.

HAZARDOUS MATERIALS, SUBSTANCES AND WASTE.
Railroads.
Transportation of hazardous materials.
Documents required, §23-12-406.
Transportation.
Documents required, §23-12-406.

HEAD HUNTERS.
Professional employer organizations, §§23-92-401 to 23-92-419.

HEALTH.
Continuing care providers, §§23-93-101 to 23-93-207.
Insurance.
Comprehensive health insurance pool, §§23-79-501 to 23-79-517.
Maintenance organizations.
General provisions, §§23-76-101 to 23-76-132.

HEALTH CARE PLANS.
Health maintenance organizations.
Applicability of provisions to health care plans, §23-76-103.

HEALTH CARE PLANS —Cont'd
Health maintenance organizations —Cont'd
Generally, §§23-76-101 to 23-76-132.

HEALTH CARE PORTABILITY AND ACCOUNTABILITY.
Comprehensive health insurance pool, §§23-79-501 to 23-79-517.
Generally, §§23-86-301 to 23-86-314.

HEALTH CARE PROVIDERS.
Patient protection act.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.

HEALTH CARE SHARING MINISTRIES.
Defined, §23-60-104.
Insurance code.
Inapplicability of provisions, §23-60-104.

HEALTH INSURANCE.
Abortion.
Exchanges not to cover, §23-79-156.
Supplemental abortion coverage, §23-79-156.
Accident and health insurance defined, §23-62-103.
Actions.
Policies.
Legal actions, §23-85-116.
Adopted minors.
Coverage for adopted minors, §23-79-137.
Agents.
Excess or rejected business, §23-64-225.
Alcoholic beverages.
Policy provisions, §23-85-126.
Provisions of chapter, §23-85-102.
Ambulance services.
Direct reimbursement, §23-79-148.
Any willing provider laws.
Choice of health care providers by patients generally, §§23-99-201 to 23-99-209.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.
Arkansas health insurance marketplace.
Generally, §§23-61-801 to 23-61-807.
Navigators, guides and certified application counselors.
Licensing, §§23-64-601 to 23-64-614.
Autism spectrum disorders.
Required coverage, §23-99-418.
Beneficiaries.
Change of beneficiary, §23-85-117.

HEALTH INSURANCE —Cont'd
Benefits.
Portability and accountability.
Exceptions, §23-86-310.
Prohibition of reduction of benefits due to other insurance contracts, §23-85-132.
Block of business.
Closing, §23-79-153.
Defined, §23-79-153.
Breast cancer.
Mammogram coverage, §23-79-140.
Mastectomies.
Required coverage, §23-99-405.
Cancer prescription medication coverage, §23-79-147.
Change of occupation, §23-85-119.
Children's Preventive Health Care Act, §23-79-141.
Choice among health benefit plans, §§23-86-401 to 23-86-406.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Claims.
Forms, §23-85-111.
Standard claims form, §23-85-136.
Group and blanket health insurance, §23-86-117.
Notice of claims, §23-85-110.
Payment of claims, §§23-85-113, 23-85-114.
Time of payment, §23-85-113.
Closing a block of business, §23-79-153.
Colorectal cancer, coverage for prevention and treatment, §§23-79-1201 to 23-79-1209.
Competition.
Freedom of choice among health benefit plans, §§23-86-401 to 23-86-406.
Comprehensive health insurance pool, §§23-79-501 to 23-79-517.
Confidentiality of information.
Portability and accountability.
Disclosure of information by health plan issuers, §23-86-313.
Consumer choice, §§23-79-801 to 23-79-805.
Citation, §23-79-801.
Definitions, §23-79-802.
Health benefits plan.
Defined, §23-79-802.
Optional plans not providing state-mandated benefits, §23-79-803.
Rulemaking to implement, §23-79-805.

HEALTH INSURANCE —Cont'd
Consumer choice —Cont'd
Short title of act, §23-79-801.
State-mandated health benefits.
Defined, §23-79-802.
Optional plans not providing state-mandated benefits, §23-79-803.
Consumer protection, §§23-99-401 to 23-99-420.
Application of provisions, §23-99-416.
Applications of providers, §23-99-411.
Autism spectrum disorders, §23-99-418.
Benefits, §23-99-404.
Continuity of care, §23-99-408.
Definitions, §23-99-403.
Disclosures, §23-99-413.
Enforcement, §23-99-415.
Gag clause, §23-99-407.
Gastric pacemakers, §23-99-419.
Grievances, §23-99-410.
Legislative findings, §23-99-402.
Mastectomies, §23-99-405.
Orthotic devices and services, coverage, §23-99-417.
Preadmission review, §23-99-420.
Prescription drugs, §23-99-409.
Notice of formulary changes, §23-79-159.
Prior authorization, §23-99-420.
Prosthetic devices and services, coverage, §23-99-417.
Provider input, §23-99-412.
Regulations, §23-99-414.
Services, §23-99-406.
Short title, §23-99-401.
Utilization review, §23-99-420.
Continuation of coverage.
Group and blanket disability insurance, §23-86-114.
Continuity of care.
Required, §23-99-408.
Contraceptive coverage, §23-79-1103.
Controlled substances.
Policy provisions, §23-85-126.
Counselors.
Group and blanket health insurance.
Mental health coverage, §23-86-113.
Craniofacial anomaly corrective surgery coverage, §§23-79-1501 to 23-79-1503.
Definitions, §23-79-1501.
Required coverage, §23-79-1502.
Rules to implement provisions, §23-79-1503.
Craniomandibular disorder.
Optional coverage to be offered, §23-79-150.

HEALTH INSURANCE —Cont'd
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Defenses.
Policies.
Time limit on certain defenses, §23-85-107.
Definitions.
Outpatient services, §23-85-133.
Denial of benefits.
Other insurance, §23-85-132.
Group and blanket insurance, §23-86-111.
Dental claim based on medical necessity, denial, §23-79-158.
Dental plans.
Fees for noncovered services.
Agreement between insurers and dentists, §23-63-115.
Dental point of service option, §§23-99-601 to 23-99-608.
Anesthesia and hospitalization for dental procedures, coverage, §23-86-121.
Applicability of subchapter, §23-99-608.
Attorney General to defend subchapter, §23-99-607.
Benefits offered same as offered through network, §23-99-604.
Coverage for out-of-network dentists, §23-99-604.
Definitions, §23-99-603.
Effective date, §23-99-608.
Enforcement authority of insurance Commissioner, §23-99-606.
Findings of general assembly, §23-99-602.
Purposes, §23-99-602.
Rules and regulations, §23-99-605.
Title of act, §23-99-601.
Dental procedures.
Anesthesia and hospitalization coverage, §23-86-121.
Diabetes coverage, §§23-79-601 to 23-79-607.
Disabilities, individuals with.
Policies, exceptions to requirements, §23-85-131.
Disclosure requirements, §23-99-413.
Gag clause prohibition, §23-99-407.
Drive-thru deliveries.
Required coverage, §23-99-404.
Drugs.
Enforcement administration registry number protection, §23-66-702.
Legislative declaration, §23-66-701.

HEALTH INSURANCE —Cont'd
Drugs —Cont'd
Prescriptions.
Formulary for prescription drugs.
Exceptions, §23-99-409.
Notice of changes, §23-79-159.
Earnings.
Relation of earnings to insurance, §23-85-122.
Entitlement notwithstanding policy provisions.
Health services performed by professionals not licensed under Arkansas medical practices act, §23-79-114.
Services performed by outpatient centers, §23-79-115.
Equity in prescription insurance and contraceptive coverage, §§23-79-1101 to 23-79-1104.
Contraceptive coverage, §23-79-1103.
Definitions, §23-79-1102.
Extraordinary surcharges prohibited, §23-79-1104.
Short title, §23-79-1101.
Exchanges.
Abortion coverage prohibited, §23-79-156.
Health insurance marketplace, §§23-61-801 to 23-61-807.
Experimental and investigational surgical products and medical devices.
Group and blanket health insurance, §23-86-122.
Eye care providers.
Primary eye care providers, §§23-99-301 to 23-99-305.
Flexibility and accountability initiative, §§23-79-1001 to 23-79-1005.
Duties of department, §23-79-1005.
Legislative findings, §23-79-1001.
Medicaid demonstration initiative, §23-79-1002.
Safety-net benefit fund, §23-79-1004.
Safety-net benefit program, §23-79-1003.
Forms.
Claims, §23-85-111.
Policies, §23-85-104.
Franchise disability insurance law, §23-85-101.
Fraud.
Annual report by commissioner, §23-61-116.

HEALTH INSURANCE —Cont'd
Freedom of choice among health benefit plans, §§23-86-401 to 23-86-406.
Citation of provisions, §23-86-401.
Definitions, §23-86-403.
Legislative findings and intent, §23-86-402.
Optional health benefit plans, §23-86-404.
Pricing according to actuarial principles, §23-86-405.
Short title, §23-86-401.
Specific coverages not required by provisions, §23-86-406.
Freedom of choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Gag clauses.
Prohibition, §23-99-407.
Gastric pacemakers.
Required coverage, §23-99-419.
General provisions, §§23-85-101 to 23-85-139.
Grace period, §23-85-108.
Greyhound racing franchise holder's employees, §23-111-516.
Grievance procedures, §23-99-410.
Grievance systems and quality assessment and improvement systems.
Managed care plans, §§23-99-701 to 23-99-706.
Benefits offered, inapplicability of director's regulatory authority, §23-99-705.
Definitions, §23-99-702.
Grievance system, §23-99-703.
Insurance exempted from provisions, §23-99-705.
Legislative findings, §23-99-701.
Power to implement and enforce provisions, §23-99-706.
Quality assessment and improvement systems, §23-99-704.
Group and blanket health insurance, §§23-86-101 to 23-86-122.
Administration of benefits, §23-86-110.
Adopted minors.
Coverage for adopted minors, §23-79-137.
Applications.
Not required, §23-86-103.
Associations, issuance of policy to.
Prerequisites, §23-86-106.

HEALTH INSURANCE —Cont'd
Group and blanket health insurance —Cont'd
Authorized insurers.
Placement of insurance exclusively with authorized insurers, §23-86-107.
Certificates.
Not required, §23-86-103.
Policies.
Application and certificates not required, §23-86-103.
Continuation of coverage, §23-86-114.
Optional continuation of benefit provisions, §23-86-109.
Persons hospitalized on date of termination of policy or contract, §23-86-116.
Conversion policy, §23-86-115.
Offer at termination of continued coverage, §23-86-114.
Counselors.
Mental health coverage for, §23-86-113.
Definitions.
Blanket accident and health insurance, §23-86-101.
Group accident and health insurance, §23-86-106.
Denial of benefits.
Other insurance, §23-86-111.
Dental procedures, anesthesia and hospitalization coverage, §23-86-121.
Direct payment of hospital or medical services, §23-86-112.
Disclosures to policyholders.
Employees under comprehensive health insurance policy, §23-86-119.
Experimental and investigational surgical products and medical devices, §23-86-122.
Forms.
Standard disability insurance claim form, §23-86-117.
Hospice care coverage for terminally ill, §23-86-120.
Impairment of speech or hearing.
Hearing devices exempt from coverage, §23-79-130.
Offer of coverage, §23-79-130.
Rejection of coverage, §23-79-130.
Time for acceptance, §23-79-130.
Information disclosed to insured employees, §23-86-119.

HEALTH INSURANCE —Cont'd
Group and blanket health insurance —Cont'd
In vitro fertilization.
Included as covered expense.
Required of companies doing business in state, §23-86-118.
Medicare supplement insurance, §§23-79-401 to 23-79-410.
Mental health.
Psychological examiner coverage, §23-79-142.
Mental illness, §23-86-113.
Payment of benefits, §23-86-104.
Minors.
Coverage.
Denial or restriction of coverage.
Certain policy provisions void, §23-79-144.
Payment of benefits, §23-86-104.
Optional continuation of benefit provisions, §23-86-109.
Other insurance.
Denial or reduction of benefits, §23-86-111.
Other like insurance.
Payment of benefits where other like insurance exists, §23-86-111.
Payment of benefits, §23-86-104.
Existence of other like insurance.
Effect, §23-86-111.
Placement with authorized insurer, §23-83-123.
Policies.
Applications.
Not required, §23-86-103.
Certificates.
Not required, §23-86-103.
Direct payment of hospital or medical services, §23-86-112.
Provisions required, §§23-86-102, 23-86-108.
Premiums.
Conversion policy, §23-86-115.
Provisions required, §§23-86-102, 23-86-108.
Reduction of benefits.
Other insurance, §23-86-111.
Required provisions, §§23-86-102, 23-86-108.
Secondary carrier.
Administration of benefits, §23-86-110.
Standard disability insurance claim form, §23-86-117.
Substance abuse coverage, §23-79-139.

HEALTH INSURANCE —Cont'd
Group and blanket health insurance —Cont'd
Test tube babies.
In vitro fertilization.
Included as covered expense.
Required of companies doing business in state, §23-86-118.
Unauthorized insurers, §23-83-124.
Gynecological services.
Required coverage, §23-99-406.
Health care benefit providers.
Reinsured or administered by third party administrators.
Applicability of code, §23-61-503.
Examination by insurance commissioner, §23-61-504.
Exceptions from act, §23-61-502.
Jurisdiction.
Insurance department, §23-61-503.
Purpose of subchapter, §23-61-501.
Purpose of subchapter, §23-61-501.
Rules and regulations.
Promulgation, §23-61-508.
Healthcare fraud.
Annual report by commissioner, §23-61-116.
Health care providers.
Choice of patients, protection, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Eye care providers.
Primary eye care providers, §§23-99-301 to 23-99-305.
Primary eye care providers, §§23-99-301 to 23-99-305.
Recoupment from medical providers, §§23-63-1801 to 23-63-1807.
Health insurance marketplace.
Generally, §§23-61-801 to 23-61-807.
Navigators, guides and certified application counselors.
Licensing, §§23-64-601 to 23-64-614.
Hearing aids, coverage, §§23-79-1401 to 23-79-1403.
Definitions, §23-79-1401.
Required coverage, §23-79-1402.
Rules for administration of provisions, §23-79-1403.
Hospice care coverage for terminally ill.
Offered to master group contract holder, §23-86-120.
Illegal occupations, §23-85-125.

HEALTH INSURANCE —Cont'd
In vitro fertilization.
Coverage required, §23-85-137.
Group and blanket health insurance.
Coverage required, §23-86-118.
Late payment of claims by health carriers.
Penalty, §23-66-215.
Losses.
Proof, §23-85-112.
Major medical benefits coverage.
Individual health insurance coverage.
Renewal of policy, exceptions, §23-79-119.
Mammograms.
Coverage for mammogram screening of occult breast cancer.
Generally, §23-79-140.
Marketplace.
Arkansas health insurance marketplace.
Generally, §§23-61-801 to 23-61-807.
Navigators, guides and certified application counselors.
Licensing, §§23-64-601 to 23-64-614.
Mastectomies.
Required coverage, §23-99-405.
Material transactions disclosures, §§23-63-1401 to 23-63-1406.
Maternity.
Obstetrical and gynecological services.
Required coverage, §23-99-406.
Required coverage, §23-99-404.
Medically necessary foods or low protein modified food products.
Individuals or families with children with phenylketonuria, §23-79-703.
Definitions, §23-79-701.
Medicare supplement insurance, §§23-79-401 to 23-79-410.
Mental health, §§23-99-501 to 23-99-512.
Applicability, §23-99-509.
Definitions, §23-99-503.
Enforcement, §23-99-511.
Exclusions, §23-99-504.
Exemptions.
Increased costs, §23-99-505.
Group and blanket health insurance.
Minimum benefits, §23-86-113.
Payment of benefits, §23-86-104.
Increased costs.
Exemption, §23-99-505.
Intent of state, §23-99-502.
Medical necessity, §23-99-507.
Out-of-network benefits, §23-99-512.
Parity requirements, §23-99-506.

HEALTH INSURANCE —Cont'd
Mental health —Cont'd
Policies.
Exception to age limit, §23-85-131.
Provisions permitted, §23-99-508.
Psychological examiner coverage, §23-79-142.
Required coverage, §§23-99-501 to 23-99-512.
Rules and regulations, §23-99-510.
Short title, §23-99-501.
Minors.
Children's Preventive Health Care Act, §23-79-141.
Denial or restriction of coverage.
Certain policy provisions void, §23-79-144.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Newborn infants.
Policies.
Coverage for newborn infants, §23-79-129.
Notice.
Claims, §23-85-110.
Obstetrical services.
Required coverage, §23-99-406.
Occupational therapy services, §23-79-157.
Optional policy provisions, §23-85-118.
Other insurance with insurer, §23-85-121.
State statutes conformity, §23-85-124.
Orthotic devices and services.
Coverage required, §23-99-417.
Other insurance.
Denial or reduction of benefits, §23-85-132.
Group and blanket insurance, §23-86-111.
Outpatient services.
Coverage required, §23-85-133.
Definitions, §23-85-133.
Waiver of coverage, §23-85-133.
Patient protection act, §§23-99-201 to 23-99-209.
Abortion coverage prohibited under, §23-79-156.
Phenylketonuria.
Medically necessary food or low protein modified food products, §23-79-703.
Definitions, §23-79-701.
Physical therapy services, §23-79-157.

HEALTH INSURANCE —Cont'd
Physician assistant services.
Reimbursement, §23-79-154.
Policies.
Adopted minors.
Coverage for adopted minors, §23-79-137.
Age limit, §23-85-131.
Exceptions, §23-85-131.
Misstatement of age, §23-85-120.
Applications, §23-79-105.
Autopsies, §23-85-115.
Benefits.
Prohibition or reduction of benefits due to other insurance contracts, §23-85-132.
Captions, §23-85-105.
Change of beneficiary, §23-85-117.
Change of occupation, §23-85-119.
Changes in provisions, §23-85-106.
Claim forms, §23-85-111.
Claims.
Notice, §23-85-110.
Conforming to statute, §23-85-130.
Conformity with state statutes, §23-85-124.
Conversion policies.
Group and blanket disability insurance, §§23-86-114, 23-86-115.
Exemption of proceeds, §23-79-133.
Forms, §23-85-104.
Standard claim forms, §23-85-136.
Grace period, §23-85-108.
Group and blanket health insurance.
Applications and certifications, §23-86-103.
Conversion policies, §§23-86-114, 23-86-115.
Direct payment of hospital or medical services, §23-86-112.
Required policy provisions, §§23-86-102, 23-86-108.
Illegal occupations, §23-85-125.
Intoxicants and controlled substances, §23-85-126.
In vitro fertilization.
Coverage required, §23-85-137.
Language simplification, §§23-80-201 to 23-80-208.
Purpose of provisions, §23-80-202.
Legal actions, §23-85-116.
Medicare supplement insurance, §§23-79-401 to 23-79-410.
Misstatement of age, §23-85-120.
Newborn infant coverage, §23-79-129.
Omissions, §23-85-105.

HEALTH INSURANCE —Cont'd
Policies —Cont'd
Optional policy provisions, §23-85-118.
Other insurance with insurer, §23-85-121.
State statutes conformity, §23-85-124.
Order of certain provisions, §23-85-127.
Other insurance in this insurer, §23-85-121.
Payment of claims, §23-85-114.
Physical examinations, §23-85-115.
Premiums.
Disapproval of rate, §23-79-110.
Refund of unearned premiums upon death of insured, §23-85-134.
Proof of loss, §23-85-112.
Reciprocity, §23-85-129.
Reinstatement, §23-85-109.
Relation of earnings to insurance, §23-85-122.
Renewal.
Refusal to renew policy, §23-85-128.
Required provisions, §23-85-105.
Requirements of other jurisdictions, §23-85-129.
Sequence of policy provisions, §23-85-127.
Standard claim forms, §23-85-136.
Substance abuse coverage, §23-79-139.
Substitutions, §23-85-105.
Third party ownership, §23-85-103.
Time limit on certain defenses, §23-85-107.
Time of payment of claims, §23-85-113.
Unpaid premiums, §23-85-123.
Policy language simplification, §§23-80-201 to 23-80-208.
Applicability, §23-80-204.
Approval of forms, §23-80-208.
Authorization to use lower score, §23-80-207.
Citation of act, §23-80-201.
Company.
Defined, §23-80-203.
Construction, §23-80-205.
Insurer.
Defined, §23-80-203.
Minimum standards, §23-80-206.
Policy or policy form.
Defined, §23-80-203.
Portability and accountability, §§23-86-301 to 23-86-314.
Applicability, §23-86-302.
Availability of coverage.
Guaranteed for employers in group markets, §23-86-312.

HEALTH INSURANCE —Cont'd
Portability and accountability —Cont'd
Benefits.
Exceptions, §23-86-310.
Comprehensive health insurance pool, §§23-79-501 to 23-79-517.
Construction and interpretation, §23-86-308.
Definitions, §23-86-303.
Disclosure of information.
Health plan insurers, §23-86-313.
Discrimination based on health status, §23-86-306.
Effective dates, §23-86-302.
Excepted benefits, §23-86-310.
Exclusion of certain plans, §23-86-314.
Exclusions.
Preexisting conditions.
Limitations on exclusions, §23-86-304.
Group health plan, §23-86-305.
Special rules, §23-86-309.
Group markets.
Guaranteed availability of coverage, §23-86-312.
Guaranteed renewability, §23-86-311.
Health status.
Prohibited discrimination, §23-86-306.
Limitation of actions, §23-86-302.
Multiple employer plans.
Guaranteed renewability, §23-86-307.
Preexisting conditions.
Limitations on exclusions, §23-86-304.
Renewability.
Guaranteed in multiple employer plans, §23-86-307.
Guaranteed renewability of coverage for employers in group markets, §23-86-311.
Rules and regulations.
Special rules for group health plans, §23-86-309.
Title, §23-86-301.
Preadmission review, §23-99-420.
Premiums.
Disapproval of rate, §23-79-110.
Group and blanket health insurance.
Conversion policy, §23-86-115.
Method of payment.
Change, §23-85-139.
Small employer health insurance purchasing groups, §23-86-510.

HEALTH INSURANCE —Cont'd
Premiums —Cont'd
Unearned premiums.
Refund upon death of insured, §23-85-134.
Unpaid premiums, §23-85-123.
Prescription drug benefits, §23-79-149.
Cancer treatment medication, §23-79-147.
Equity in prescription insurance and contraceptive coverage, §§23-79-1101 to 23-79-1104.
Contraceptive coverage, §23-79-1103.
Definitions, §23-79-1102.
Extraordinary surcharges prohibited, §23-79-1104.
Short title, §23-79-1101.
Formulary for prescription drugs.
Notice of changes, §23-79-159.
Procedure for exceptions, §23-99-409.
Uniformity of prescription drug cards, §§23-80-401 to 23-80-409.
Prescription drugs, §23-79-149.
Primary eye care providers.
Citation of act.
Short title, §23-99-301.
Definitions, §23-99-302.
Health benefit plans.
Defined, §23-99-302.
Requirements, §23-99-303.
Remedies for violations, §23-99-305.
Right to receive treatment from personal doctor.
Provisions not to prevent treatment, §23-99-304.
Title of act.
Short title, §23-99-301.
Prior authorization, §23-99-420.
Proceeds.
Exemption of proceeds, §23-79-133.
Prostate cancer, coverage for prevention and treatment, §§23-79-1301 to 23-79-1303.
Prosthetic devices and services.
Coverage required, §23-99-417.
Providers.
Input required, §23-99-412.
Processing applications, §23-99-411.
Reciprocity.
Policies.
Requirements of other jurisdictions, §23-85-129.
Recoupment from medical providers, §§23-63-1801 to 23-63-1807.
Definitions, §23-63-1801.

HEALTH INSURANCE —Cont'd
Recoupment from medical providers —Cont'd
Documentation required, §23-63-1804.
Notice of intent to exercise recoupment, §23-63-1803.
Penalties, §23-63-1805.
Rulemaking authority, §23-63-1806.
Time for recoupment, §23-63-1802.
Waiver of provisions by contract prohibited, §23-63-1807.
Reduction of benefits.
Other insurance, §23-85-132.
Group and blanket insurance, §23-86-111.
Reinstatement of policies, §23-85-109.
Renewal.
Major medical benefits.
Individual health insurance coverage, §23-79-119.
Refusal to renew, §23-85-128.
Risk-based capital act, §§23-63-1301 to 23-63-1316.
Rules and regulations.
Consumer protection, §23-99-414.
Mental health coverage, §23-99-510.
Safety-net benefit fund.
Flexibility and accountability initiative, §23-79-1004.
Safety-net benefit program.
Flexibility and accountability initiative, §23-79-1003.
Scope of chapter, §23-85-102.
Simplification of policy language, §§23-80-201 to 23-80-208.
Small employer health insurance.
Applicability of provisions, §23-86-203.
Effective date, §23-86-209.
Commissioner.
Defined, §23-86-202.
Suspension of certain provisions.
Discretion of commissioner, §23-86-208.
Definitions, §23-86-202.
Effective date of provisions, §23-86-209.
Health benefit plans.
Defined, §23-86-202.
Plans to which provisions apply, §23-86-203.
Legislative declaration.
Purpose of provisions, §23-86-201.
Premiums.
Base premium rate.
Defined, §23-86-202.
Index rate.
Defined, §23-86-202.

HEALTH INSURANCE —Cont'd
Small employer health insurance —Cont'd
Premiums —Cont'd
New business premium rate.
Defined, §23-86-202.
Rating period.
Defined, §23-86-202.
Restrictions as to rates, §23-86-204.
Suspension of certain provisions.
Discretion of commissioner, §23-86-208.
Purpose of provisions, §23-86-201.
Records.
Maintenance by small employer carriers, §23-86-207.
Small employer health insurance purchasing groups, §§23-86-501 to 23-86-512.
Administrative services.
Providing to members, §23-86-506.
Benefits requirements, §23-86-504.
Board of directors.
Organization of group, §23-86-503.
Citation of act, §23-86-501.
Composition of groups, §23-86-503.
Conflicts of interest, §23-86-508.
Cooperation among groups, §23-86-509.
Coverage requirements, §23-86-504.
Definitions, §23-86-502.
Eligibility, §23-86-503.
Enrollments, §23-86-503.
Filing of forms, §23-86-507.
Forms.
Filing of forms, §23-86-507.
Health insurance purchasing group health carrier.
Defined, §23-86-502.
Market service, §23-86-512.
Nonprofit organization, §23-86-503.
Notice.
State-mandated health benefits plans.
Rejection, §23-86-505.
Pooling operations among groups, §23-86-509.
Premiums, §23-86-510.
Reports.
Administrative services to members, §23-86-506.
Rulemaking to implement provisions, §23-86-511.
Size requirements, §23-86-503.
State-mandated health benefits plans.
Defined, §23-86-502.
Rejection, §23-86-505.
Title of act, §23-86-501.

HEALTH INSURANCE —Cont'd
Speech-language pathology services, §23-79-157.
Subrogation recovery, §23-79-146.
Substance abuse coverage, §23-79-139.
Supplemental abortion coverage, §23-79-156.
Temporomandibular joint disorder.
Optional coverage to be offered, §23-79-150.
Terminated producers.
Settlement with, §23-64-231.
Test tube babies.
Group and blanket health insurance.
Coverage required, §23-86-118.
In vitro fertilization.
Coverage required, §23-85-137.
Third parties.
Ownership of policies, §23-85-103.
Unauthorized insurers.
Group and blanket health insurance.
Placement of insurance with unauthorized insurers prohibited, §23-86-107.
Utilization review, §23-99-420.

HEALTH INSURANCE MARKETPLACE, §§23-61-801 to 23-61-807.
Amendatory to insurance code, §23-61-807.
Assessment or user fee, §23-61-805.
Average costs of licensing, regulatory fees and other payment required.
Publication, §23-61-805.
Board of directors, §23-61-803.
Accounting of activities, receipts, expenditures, §23-61-803.
Chair, §23-61-803.
Experience required, §23-61-803.
Members, §23-61-803.
Stipend, expense reimbursement, §23-61-803.
Terms, §23-61-803.
Certification, recertification, decertification of health benefit plans.
Implementation of procedures and criteria, §23-61-804.
Certified application counselors.
Defined, §23-64-602.
Discipline, §23-64-611.
Duties, §§23-64-605, 23-64-609.
License.
Generally, §§23-64-601 to 23-64-614.
Required, §23-64-605.

HEALTH INSURANCE MARKETPLACE —Cont'd
Certified application counselors —Cont'd
Prohibited activities, §23-64-610.
Conflicts with provisions of insurance code, §23-61-807.
Contracts with entities to assist with planning and operation, §23-61-803.
Created, §23-61-803.
Definitions, §23-61-802.
Delinquent assessments and fees, §23-61-805.
Duties, §23-61-804.
Employees, §23-61-803.
Executive director.
Board may hire, duties, §23-61-803.
Exemption from certain laws, §23-61-803.
Exemption from taxation, §23-61-803.
Funding, §23-61-805.
Grant funds.
Authority to apply for, §23-61-803.
Grants or contracts with entity using navigators or guides, §23-64-612.
Guides.
Contracts, §23-64-604.
Defined, §23-64-602.
Discipline, §23-64-611.
Duties, §§23-64-604, 23-64-609.
Grants or contracts with entity using, §23-64-612.
License.
Generally, §§23-64-601 to 23-64-614.
Required, §23-64-604.
Prohibited activities, §23-64-610.
Indemnification of board members and employees, §23-61-803.
Information-sharing agreements.
Authority to enter into, §23-61-803.
Licensed producer.
Certification.
Qualifications, §23-64-607.
Required, §23-64-606.
Licensing of navigators, guides, certified application counselors, §§23-64-601 to 23-64-614.
Additional duties of licensees, §23-64-609.
Amendatory to insurance code, §23-64-614.
Applications for license, §23-64-607.
Certified application counselor license required, §23-64-605.
Definitions, §23-64-602.

HEALTH INSURANCE MARKETPLACE —Cont'd
Licensing of navigators, guides, certified application counselors —Cont'd
Denial, suspension, revocation, refusal to issue or renew license, §23-64-611.
Discipline, §23-64-611.
Guide license required, §23-64-604.
Navigator license required, §23-64-603.
Prohibited activities, §23-64-610.
Qualifications for license, §23-64-607.
Relation to other laws, §23-64-614.
Renewal, §23-64-608.
Rules, §23-64-613.
Title of act, §23-64-601.
Navigators.
Defined, §23-64-602.
Discipline, §23-64-611.
Duties, §§23-64-603, 23-64-609.
Grant awarded under navigator's contract, §23-64-603.
Grants or contracts with entity using, §23-64-612.
License.
Generally, §§23-64-601 to 23-64-614.
Required, §23-64-603.
Prohibited activities, §23-64-610.
Nonprofit legal entity, §23-61-803.
Notice.
Adoption of policies, procedures and rules, §23-61-803.
Offset of assessment against premium tax payable, §23-61-805.
Policies, procedures and rules.
Adoption, §23-61-803.
Political subdivision of state, §23-61-803.
Procurement law.
Exemption, §23-61-803.
Public employees' retirement system.
Employees ineligible to participate, §23-61-803.
Relation to other laws, §23-61-807.
Rules to implement chapter.
Promulgation by commissioner, §23-61-806.
Small business health option program.
Duty to establish, §23-61-804.
Title of act, §23-61-801.
Uniform classification and compensation act.
Exemption, §23-61-803.

HEALTH MAINTENANCE ORGANIZATIONS.
Advertising.
Untrue or misleading advertising.
Prohibited practices, §23-76-119.
Agents.
Regulation, §23-76-120.
Annual reports, §23-76-113.
Any willing provider laws.
Choice of health care providers by patients, §§23-99-201 to 23-99-209.
Enforcement of any willing provider laws, §§23-99-801 to 23-99-803.
Appeals.
Revocation or suspension of certificate of authority, §23-76-126.
Applicability of provisions, §23-76-103.
Bonds, surety.
Directors, officers or partners, §23-76-111.
Cancellation.
Prohibited practices, §23-76-119.
Cancer.
Mammogram screening of occult breast cancer.
Coverage generally, §23-79-140.
Certificates of authority.
Applications, §23-76-107.
Fees regarding, §23-76-127.
Issuance, §23-76-108.
Revocation, §23-76-123.
Administrative proceedings, §23-76-126.
Suspension, §23-76-123.
Administrative proceedings, §23-76-126.
Violations.
Penalties and enforcement, §23-76-105.
Changes in operation.
Information provided to enrollees, §23-76-114.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Claims.
Complaint system, §23-76-116.
Commissioner of insurance.
Definition of "commissioner," §23-76-102.
Competition.
Freedom of choice among health benefit plans, §§23-86-401 to 23-86-406.

HEALTH MAINTENANCE ORGANIZATIONS —Cont'd
Complaint system.
Establishment, §23-76-116.
Maintenance, §23-76-116.
Comprehensive health insurance pool.
General provisions, §§23-79-501 to 23-79-517.
Included in definition of "insurer," §23-79-503.
Confidentiality of information.
Filings and reports as public documents, §23-76-128.
Medical information, §23-76-129.
Conservation.
Nature of conservation, §23-76-124.
Construction and interpretation.
Relationship to other laws, §23-76-104.
Consumer choice in health insurance, §§23-79-801 to 23-79-805.
Continuation of benefits.
Protection against insolvency, §23-76-118.
Contracts.
Authority to contract.
Insurance commissioner, §23-76-130.
Hold harmless clauses.
Protection against insolvency, §23-76-118.
Providers.
Powers as to contracting with, §23-76-109.
Copayments.
Tax on, §23-76-131.
Craniomandibular disorder.
Optional coverage to be offered, §23-79-150.
Definitions, §23-76-102.
Dental plans.
Fees for noncovered services.
Agreement between insurers and dentists, §23-63-115.
Dental point of service option, §§23-99-601 to 23-99-608.
Diabetes coverage, §§23-79-601 to 23-79-607.
Duties.
Generally, §23-76-109.
Election to be subject to insurance holding company regulatory act, §23-76-104.
Emergency and special out-of-area services, indemnity benefits covering, §23-76-109.
Enrollees.
Information to enrollees, §23-76-114.

HEALTH MAINTENANCE ORGANIZATIONS —Cont'd
Enrollees —Cont'd
Open enrollment, §23-76-115.
Establishment.
Application, §23-76-107.
Guidelines, §23-76-107.
Evidence.
Coverage and charges for health care services, §23-76-112.
Examinations.
Taking when commissioner deems necessary, §23-76-122.
Exemption from application of law, §23-76-104.
Fees.
State insurance department trust fund, fees to be paid as special revenues, §23-76-127.
Fidelity insurance or bond for directors, officers or partners, §23-76-111.
Fiduciaries.
Responsibilities of directors and officers, §23-76-111.
Financial report, §23-76-113.
Fines.
Insolvency protection.
Hold harmless violations, §23-76-118.
Freedom of choice among health benefit plans, §§23-86-401 to 23-86-406.
Citation of provisions, §23-86-401.
Definitions, §23-86-403.
Legislative findings and intent, §23-86-402.
Optional health benefit plans, §23-86-404.
Pricing according to actuarial principles, §23-86-405.
Short title, §23-86-401.
Specific coverages not required by provisions, §23-86-406.
Funds.
Fiduciary responsibilities of directors and officers, §23-76-111.
Governing body.
Members, §23-76-110.
Grievance systems and quality assessment and improvement programs, §§23-99-701 to 23-99-706.
Healthcare fraud.
Annual report by commissioner, §23-61-116.
Health insurance.
Consumer choice in health insurance, §§23-79-801 to 23-79-805.

HEALTH MAINTENANCE ORGANIZATIONS —Cont'd
Hold harmless protection.
Insolvency protection, §23-76-118.
Prohibited practices as to, §23-76-119.
Hospital and medical service corporations.
Powers, §23-76-121.
Hospitals or medical facilities, constructing and operating, §23-76-109.
Indemnity benefits, offering, §23-76-109.
Information to enrollees, §23-76-114.
Insolvency.
Protection against insolvency, §23-76-118.
Insurance code provisions expressly applicable, §23-76-104.
Investments.
Guidelines, §23-76-117.
Issuance of certificate of authority, §23-76-108.
Legislative findings, §23-76-101.
Licenses.
Requirement, §23-76-106.
Liquidation.
Nature of liquidation, §23-76-124.
Loans to medical groups, power to make, §23-76-109.
Mammograms.
Coverage for mammogram screening of occult breast cancer.
Generally, §23-79-140.
Material changes in operation.
Information provided to enrollees, §23-76-114.
Medical information.
Confidentiality, §23-76-129.
Minors.
Children's Preventive Health Care Act, §23-79-141.
Nonrenewal.
Prohibited practices, §23-76-119.
Notice.
Rules and regulations.
Promulgation, §23-76-125.
Open enrollment, §23-76-115.
Patient protection act.
Choice of health care providers by patients, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Penalties.
Violations, §23-76-105.
Point-of-service basis, indemnity benefits, §23-76-109.
Powers.
Generally, §23-76-109.

HEALTH MAINTENANCE ORGANIZATIONS —Cont'd
Powers —Cont'd
Insurers and hospital and medical service corporations, §23-76-121.
Premiums.
Tax on premiums, §23-76-131.
Prescription drug benefits, §23-79-149.
Uniformity of prescription drug cards, §§23-80-401 to 23-80-409.
Primary care physician required.
Postsecondary students.
Options for students, §23-76-132.
Prohibited practices, §23-76-119.
Providers.
Lists.
Information provided to enrollees, §23-76-114.
Purpose, §23-76-101.
Quarterly financial reports, §23-76-113.
Rates and charges.
Evidence of coverage and charges for health care services, §23-76-112.
Recoupment from medical providers, §§23-63-1801 to 23-63-1807.
Regulation of agents, §23-76-120.
Rehabilitation.
Nature of rehabilitation, §23-76-124.
Relationship to other laws, §23-76-104.
Reports.
Annual report, §23-76-113.
Filings and reports as public documents, §23-76-128.
Information to enrollees, §23-76-114.
Medical information.
Confidentiality, §23-76-129.
Quarterly reports, §23-76-113.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Rules and regulations.
Promulgation by commissioner, §§23-76-109, 23-76-125.
Scope of provisions, §23-76-103.
Security deposits.
Protection against insolvency, §23-76-118.
Solvency.
Protection against insolvency, §23-76-118.
Stock and stockholders.
Investments, §23-76-117.
Subrogation recovery, §23-79-146.

HEALTH MAINTENANCE ORGANIZATIONS —Cont'd
Substance abuse coverage, §23-79-139.
Suspension or revocation of certificate of authority, §23-76-123.
Taxation.
Premiums and copayments.
Tax on, §23-76-131.
Temporomandibular joint disorder.
Optional coverage to be offered, §23-79-150.
Violations.
Certificates of authority.
Penalties and enforcement, §23-76-105.

HEARING AIDS.
Health insurance coverage, §§23-79-1401 to 23-79-1403.

HEARINGS.
Automobile clubs or associations.
Insurance commissioner may conduct hearings, §23-77-105.
Suspension or revocation of certificate, §23-77-107.
Banking board, §23-46-406.
Final decisions, §23-46-407.
Notice of hearing, §23-46-405.
Banks.
Revocation of trust powers, §23-47-709.
Continuing care providers.
Licenses.
Disciplinary actions, §23-93-205.
Reconsideration of denied application, §23-93-206.
Fraternal benefit societies.
Domestic societies.
Injunctions, liquidation or receivership, §23-74-606.
Examination of societies.
Opportunity to respond before findings made public, §23-74-604.
Greyhound racing.
Franchises to conduct races.
Hearing on application, §23-111-302.
Racing commission, §23-111-205.
Health maintenance organizations.
Administrative proceedings.
Revocation or suspension of certificate of authority, §23-76-126.
Highways.
State highway and transportation department, §23-2-415.
Notice, §23-2-415.

HEARINGS —Cont'd
Horse racing.
Franchises to conduct horse races.
Hearing on application, §23-110-302.
Racing commission, §23-110-205.
Insurance.
Burial associations, §§23-78-108, 23-78-124.
Certificates of authority.
Revocation or suspension, §23-63-213.
Commissioner.
Conduct of hearings, §23-61-305.
Generally, §23-61-303.
Notice of hearing, §23-61-304.
Order on hearing, §23-61-306.
Delinquency proceedings, §23-68-118.
Policies.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Risk-based capital act, §23-63-1308.
Risk-based capital requirements for health organizations, §23-63-1507.
Risk-sharing plans for property and casualty insurance.
Availability of any amount or kind of insurance, §23-95-104.
Unfair competition and trade practices, §23-66-209.
Public service commission, §23-2-415.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Hearing on application or amendment, §§23-18-516 to 23-18-518.
Navigable water crossings.
Petition by river crossing proprietor.
Hearing on, §23-3-505.
Notice, §23-2-415.
Place for, §23-2-103.
Rehearings, §23-2-422.
Special commissioners for hearings, §23-2-102.
Compensation, §23-2-102.
Public utilities.
Acquisition, control or merger.
Determination, §23-3-311.
Notice, §23-3-311.
Rehearing, §23-3-312.
Stay of order pending review, §23-3-314.
Railroads.
Corporations.
Application for incorporation, §23-11-205.

HEARINGS —Cont'd
Railroads —Cont'd
Crossings.
Proposed road or street crossings, §23-12-304.
Risk-based capital act.
Confidential department hearings upon happenings of certain events, §23-63-1308.
Risk-based capital requirements for health organizations, §23-63-1507.
Savings and loan associations.
Charters.
Applications, §23-37-309.
Trust companies.
Acquisition of control, §23-51-136.
Petition for review of adverse decision, §23-51-137.
Appeals.
Commissioner hearings, §23-51-112.
Charter applications, §23-51-108.
Commissioner's actions.
Notice and opportunity for hearing, §23-51-189.
Procedure, §23-51-112.

HEIRS.
Franchises.
Motor vehicles, §23-112-403.
Rural telecommunications cooperatives, §23-17-238.

HIGH COST HOME LOANS.
Home loan protection act, §§23-53-101 to 23-53-106.

HIGHWAYS, ROADS AND STREETS.
Accounts and accounting.
State highway and transportation department, §23-2-212.
Systems of accounts.
Authority to establish, §23-2-306.
Actions.
State highway and transportation department.
Compelling compliance with provisions of act and orders, §23-1-104.
Appeals.
State highway and transportation department.
Motor carriers.
Complaints against carriers.
Order of department, §23-13-308.
Orders.
Appeals to circuit court, §23-2-425.
Appeals from circuit court to supreme court, §23-2-425.

HIGHWAYS, ROADS AND STREETS —Cont'd
Appeals —Cont'd
State highway and transportation department —Cont'd
Orders —Cont'd
Motor carriers.
Complaints against carriers, §23-13-308.
Burden of proof.
State highway and transportation department.
Persons seeking to avoid compliance with act or orders, §23-2-417.
Complaints.
Repeal of provisions, effect, §23-2-430.
State highway and transportation department.
Rates and charges.
Common carriers.
Determination, §23-13-239.
Separation or consolidation, §23-2-416.
Service of copy of complaint, §23-3-119.
Who may complain, §23-3-119.
Contempt.
State highway and transportation department.
Witnesses.
Refusal to attend or testify, §23-2-410.
Contracts.
State highway and transportation department.
Orders.
Contracts in violation of orders. Void, §23-1-112.
Costs.
State highway and transportation department.
Contests.
Unsuccessful party to be taxed with costs, §23-2-428.
Deposit of costs.
Department not required to deposit, §23-2-428.
Definitions.
State highway and transportation department, §23-2-201.
Depositions.
State highway and transportation department, §23-2-412.
Evidence.
State highway and transportation department.
Copies of official papers, §23-1-111.
Rules of evidence, §23-2-403.

HIGHWAYS, ROADS AND STREETS —Cont'd
Fees.
State highway and transportation department.
Schedule of fees, §23-2-314.
Hearings.
State highway and transportation department, §23-2-415.
Notice, §23-2-415.
Inventory.
State highway and transportation department.
Requiring inventories of property, §23-2-307.
Investigations.
State highway and transportation department, §23-2-429.
Powers, §§23-2-310, 23-2-402.
Rates, charges or service of utilities.
Change in rates, §23-4-622.
Preliminary investigation, §23-3-118.
Jurisdiction.
State highway and transportation department.
Actions by or against department, §23-1-108.
Interstate transportation services, §23-2-303.
State highway commission, §23-2-209.
Railroad crossings.
Construction and location, §23-12-304.
Jury.
State highway and transportation department.
Actions by or against department.
Trial without jury, §23-1-110.
Notice.
State highway and transportation department.
Hearings, §23-2-415.
Service, §23-2-405.
Oaths.
State highway and transportation department.
Administration of oaths, §23-2-406.
Orders.
State highway and transportation department.
Actions between private persons and railroad companies.
Orders not controverted, §23-2-427.
Amendment, §23-2-426.
Appeals, §23-2-425.

HIGHWAYS, ROADS AND STREETS —Cont'd
Orders —Cont'd
State highway and transportation department —Cont'd
Burden of proof.
Persons seeking to avoid compliance, §23-2-417.
Compliance with orders.
Burden of proof on persons seeking to avoid compliance, §23-2-417.
Power to compel, §23-1-104.
Required, §23-1-103.
Contracts in violation of orders.
Void, §23-1-112.
Evidence.
Copies as evidence, §23-2-420.
Penalties.
Violations, §23-1-103.
Rescinding, §23-2-426.
Violations.
Penalties, §23-1-103.
Written orders required, §23-2-420.
Penalties.
State highway and transportation department.
Orders.
Violations, §23-1-103.
Perjury.
State highway and transportation department.
Witnesses, §23-2-413.
Permits.
State highway and transportation department.
Assignability.
Indeterminate permits granted under 1919 act, §23-1-113.
Pipelines.
State highway commission.
Authority concerning regulation of pipeline companies.
Transferred, vested and conferred upon public service commission, §23-2-209.
Pleadings.
State highway and transportation department, §23-2-403.
Public utilities.
Wires over public or private ways.
Duties of utility, §23-3-115.
Records.
State highway and transportation department, §23-2-212.
Open to public, §23-2-316.
Protective order, §23-2-316.
Proceedings, §23-2-418.

HIGHWAYS, ROADS AND STREETS —Cont'd
Reports.
State highway and transportation department.
Railroad companies.
Report as to information regarding, §23-11-104.
Right of entry.
State highway and transportation department, §§23-2-310, 23-2-311.
Rules and regulations.
State highway and transportation department, §23-2-210.
Compliance required, §23-1-103.
Penalties.
Violations, §23-1-103.
Procedures, §23-2-211.
Violations.
Penalties, §23-1-103.
Self-incrimination.
State highway and transportation department.
Witnesses.
No bar to testimony, §23-2-411.
Service of process.
State highway and transportation department, §23-2-405.
Complaints.
Service of copy of complaint, §23-3-119.
State highway and transportation department.
Accounts and accounting, §23-2-212.
Systems of accounts.
Authority to establish, §23-2-306.
Actions.
Compelling compliance with provisions of act and orders, §23-1-104.
Appeals.
Orders.
Appeals to circuit court, §23-2-425.
Appeals from circuit court to supreme court, §23-2-425.
Motor carriers.
Complaints against carriers, §23-13-308.
Burden of proof.
Persons seeking to avoid compliance with act or orders, §23-2-417.
Complaints.
Rates and charges.
Common carriers.
Determination, §23-13-239.
Separation or consolidation, §23-2-416.

HIGHWAYS, ROADS AND STREETS —Cont'd
State highway and transportation department —Cont'd
Complaints —Cont'd
Service of copy of complaint, §23-3-119.
Who may complain, §23-3-119.
Contempt.
Witnesses.
Refusal to attend or testify, §23-2-410.
Contracts.
Orders.
Contracts in violation of orders.
Void, §23-1-112.
Costs.
Contests.
Unsuccessful party to be taxed with costs, §23-2-428.
Deposit of costs.
Department not required to deposit, §23-2-428.
Definitions, §23-2-201.
Depositions, §23-2-412.
Evidence.
Copies of official papers, §23-1-111.
Self-incrimination.
No bar to testimony, §23-2-411.
Expenses.
Payment, §23-2-212.
Fees.
Schedule of fees, §23-2-314.
Free transportation for members and employees, §23-2-208.
Hearings, §23-2-415.
Notice, §23-2-415.
Inventories.
Requiring inventories of property, §23-2-307.
Investigations, §23-2-429.
Powers, §§23-2-310, 23-2-402.
Rates, charges or service of utilities.
Change in rates, §23-4-622.
Preliminary investigation, §23-3-118.
Jurisdiction.
Actions by or against department, §23-1-108.
Interstate transportation services, §23-2-303.
Jury.
Actions by or against department.
Trial without jury, §23-1-110.
Misdemeanors.
Subpoenas.
Refusal to comply, §23-2-409.

HIGHWAYS, ROADS AND STREETS —Cont'd
State highway and transportation department —Cont'd
Notice.
Hearings, §23-2-415.
Service, §23-2-405.
Oaths.
Administration of oaths, §23-2-406.
Orders.
Actions between private persons and railroad companies.
Orders not controverted, §23-2-427.
Amendment, §23-2-426.
Appeals, §23-2-425.
Burden of proof.
Compliance with orders.
Persons seeking to avoid, §23-2-427.
Compliance with orders.
Burden of proof on persons seeking to avoid compliance, §23-2-427.
Powers to compel, §23-1-104.
Required, §23-1-103.
Contracts in violation of orders.
Void, §23-1-112.
Evidence.
Copies as evidence, §23-2-420.
Penalties.
Violations, §23-1-103.
Rescinding, §23-2-426.
Violations.
Contracts in violation void, §23-1-112.
Penalties, §23-1-103.
Written orders required, §23-2-420.
Penalties.
Orders.
Violations, §23-1-103.
Perjury.
Witnesses, §23-2-413.
Permits.
Assignability.
Indeterminate permits granted under 1919 act, §23-1-113.
Personnel.
Free transportation, §23-2-208.
Powers as to, §23-2-207.
Pipeline.
Authority conferred and vested in concerning regulation of pipeline companies.
Transferred, vested and conferred upon public service commission, §23-2-209.
Pleading, §23-2-403.

HIGHWAYS, ROADS AND STREETS —Cont'd
State highway and transportation department —Cont'd
Powers, §23-2-301.
Enumerated, §23-2-304.
Organization or reorganization of utilities, §23-3-101.
Personnel, §23-2-207.
Subpoenas, §§23-2-313, 23-2-407.
Production of books and records.
Subpoenas, §23-2-408.
Quorum, §23-2-419.
Railroads.
Charters of railroad corporations.
Extension, §23-11-223.
Definition of department, §23-11-202.
Enforcement of laws relating to railroads or express companies on complaint, §23-11-101.
Frequency of trains and street cars.
Powers of department, §23-12-104.
Hearings.
Application for incorporation, §23-11-205.
Inspection of railroads, §23-12-102.
Report as to information regarding railroad companies, §23-11-104.
Records, §23-2-212.
Open to public, §23-2-316.
Protective orders, §23-2-316.
Proceedings, §23-2-418.
Reports.
Railroad companies.
Report as to information regarding, §23-11-104.
Right of entry, §§23-2-310, 23-2-311.
Rules and regulations, §23-2-210.
Compliance required, §23-1-103.
Procedures, §23-2-211.
Violations.
Penalties, §23-1-103.
Rules of evidence, §23-2-403.
Self-incrimination.
No bar to testimony, §23-2-411.
Service of process, §23-2-405.
Complaints.
Service of copy of complaint, §23-3-119.
Subpoenas.
Powers of department, §§23-2-313, 23-2-407.
Production of books and records, §23-2-408.
Refusal to comply, §23-2-409.
Witnesses.
Compelling attendance and testimony, §23-2-313.

HIGHWAYS, ROADS AND STREETS —Cont'd
State highway and transportation department —Cont'd
Witnesses —Cont'd
Contempt.
Refusal to attend or testify, §23-2-410.
Depositions, §23-2-412.
Disposition, §23-2-412.
Exemption from prosecution based on testimony, §23-2-411.
False testimony.
Penalties, §23-1-105.
Fees, §23-2-414.
Mileage, §23-2-414.
Penalties.
False testimony, §23-1-105.
Perjury, §23-2-413.
Refusal to attend or testify.
Contempt proceedings, §23-2-410.
Self-incrimination.
No bar to testimony, §23-2-411.
Subpoena power, §§23-2-313, 23-2-407.
State highway commission.
Jurisdiction.
Railroad crossings.
Construction and location, §23-12-304.
Pipelines.
Authority concerning regulation of pipeline companies.
Transferred, vested and conferred upon public service commission, §23-2-209.
Railroads.
Crossings.
Inspection of proposed road or street crossings, §23-12-304.
Jurisdiction over location and construction, §23-12-304.
Subpoenas.
State highway and transportation department.
Powers, §§23-2-313, 23-2-407.
Production of books and records, §23-2-408.
Refusal to comply, §23-2-409.
Witnesses.
State highway and transportation department.
Compelling attendance and testimony, §23-2-313.
Contempt proceedings.
Refusal to attend or testify, §23-2-410.
Depositions, §23-2-412.

HIGHWAYS, ROADS AND STREETS —Cont'd
Witnesses —Cont'd
State highway and transportation department —Cont'd
Exemption from prosecution based on testimony, §23-2-411.
False testimony.
Penalties, §23-1-105.
Fees, §23-2-414.
Mileage, §23-2-414.
Penalties.
False testimony, §23-1-105.
Perjury, §23-2-413.
Refusal to attend or testify.
Contempt proceedings, §23-2-410.
Self-incrimination.
No bar to testimony, §23-2-411.
Subpoena power, §§23-2-313, 23-2-407.
Writing and written instruments.
State highway and transportation department.
Orders.
Written orders required, §23-2-420.

HOLDING COMPANIES, INSURANCE.
Appeals.
Determinations of commissioner, §23-63-519.
Citation of subchapter, §23-63-501.
Confidentiality of information, §23-63-517.
Mutual insurance holding companies, §23-69-320.
Control of or merger with domestic insurer.
Exceptions to provisions, §23-63-507.
Filing requirements, §23-63-506.
Alternative filing materials, §23-63-509.
Mailings, §23-63-511.
Hearings, §23-63-510.
Mailing, §23-63-511.
Notice, §23-63-510.
Jurisdiction of courts, §23-63-512.
Mailings, §23-63-511.
Notice.
Hearings, §23-63-510.
Mailing of notice, §23-63-511.
Prohibited acts, §23-63-513.
Requirements.
Exceptions to requirements, §23-63-507.
Filing requirements, §23-63-506.
Alternative filing materials, §23-63-509.

HOLDING COMPANIES, INSURANCE —Cont'd
Control of or merger with domestic insurer —Cont'd
Service of process, §23-63-512.
Statements, §23-63-508.
Contents, §23-63-508.
Failure to file.
Prohibited, §23-63-513.
Filing.
Required, §23-63-506.
Violations of provisions.
Prohibited acts, §23-63-513.
Criminal proceedings.
Violations, §23-63-522.
Definitions, §23-63-503.
Disclosure requirements, §23-63-514.
Examinations.
Power of commissioner, §23-63-516.
Purposes and limitations upon, §23-63-516.
Injunctions.
Violations of provisions, §23-63-521.
Judicial review.
Determinations of commissioner, §23-63-519.
Legislative declaration, §23-63-502.
Licenses.
Revocation, suspension or nonrenewal, §23-63-524.
Mandamus.
Determinations of commissioner, §23-63-519.
Mergers.
Control of or merger with domestic insurer, §§23-63-506 to 23-63-513.
Approval by commissioners, §23-63-510.
Exceptions, §23-63-507.
Filing requirements, §23-63-506.
Alternative filing materials, §23-63-509.
Content of statement, §23-63-508.
Jurisdiction, §23-63-512.
Mailings, §23-63-511.
Service of process, §23-63-512.
Violations, §23-63-513.
Mutual insurance holding companies, §23-69-313.
Mutual insurance holding companies, §§23-69-301 to 23-69-323.
Acquisitions, §23-69-313.
Annual statements, §23-69-315.
Citation of act, §23-69-301.
Compensation of officers, directors, employees and agents, §23-69-318.

HOLDING COMPANIES, INSURANCE —Cont'd
Mutual insurance holding companies —Cont'd
Confidentiality of information, §23-69-320.
Definitions, §23-69-303.
Demutualization.
Provisions not to prohibit, §23-69-317.
Experts.
Hiring by commissioner for certain purposes, §23-69-319.
Injunctive orders, §23-69-321.
Membership in, §23-69-314.
Mergers, §23-69-313.
Production of documents.
Power of commissioner to order, §23-69-316.
Purpose of act, §23-69-302.
Reorganization of domestic mutual insurer, §23-69-304.
Abandonment of reorganization plan, §23-69-312.
Appeal of final order, §23-69-310.
Approval of proposed reorganization plan, §§23-69-307, 23-69-308.
Certificate of authority, §23-69-309.
Continuation of corporate existence, §23-69-311.
Hearing on proposed reorganization plan, §23-69-306.
Plan of reorganization, §§23-69-305 to 23-69-308.
Rules and regulations, §23-69-322.
Supplemental nature of provisions, §23-69-323.
Title of act, §23-69-301.
Policy of state, §23-63-502.
Receivership, §23-63-523.
Records.
Confidential treatment, §23-63-517.
Registration of insurers, §23-63-514.
Revocation, suspension or nonrenewal of insurer's license, §23-63-524.
Rules and regulations.
Mutual insurance holding companies, §23-69-322.
Promulgation by commissioner, §23-63-518.
Securities.
Voting of securities, §23-63-520.
Short title, §23-63-501.
Standards.
Transactions, §23-63-515.
Subsidiaries, §23-63-505.
Transactions.
Standards, §23-63-515.

HOLIDAYS AND OBSERVANCES.
Banks, §23-48-103.

HOME HEALTH CARE SERVICES.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

HOME LOAN PROTECTION ACT.
High cost home loans, §§23-53-101 to 23-53-106.

HORSE RACING.
Admission tax, §23-110-411.
Appeals.
Findings and orders of racing commission, §23-110-205.
Franchises to conduct horse races.
Refusal to grant, §23-110-302.
Applicability of provisions.
Nonapplicability to other methods or forms of racing, §23-110-103.
Bonds, surety.
Franchise holders, §23-110-414.
Racing commission.
Secretary, §23-110-202.
Breaks, computing, §23-110-410.
Citation of law.
Short title, §23-110-101.
Conflict of laws.
Statutes prohibiting betting on racing inapplicable, §23-110-102.
Conflicts of interest.
Racing commission.
Persons prohibited from membership, §23-110-201.
Criminal history information and background.
Owners, trainers, jockeys, and jockey agents, §23-110-204.
Wagering on electronic games of skill.
Employees and suppliers, §23-113-303.
Elections.
Racing meets.
Sunday racing, §23-110-402.
Employees of franchise holders.
Applications for employment, §23-110-308.
Racing commission authorized to examine, §23-110-308.
Misdemeanors.
Applications for employment.
False information, §23-110-308.

HORSE RACING —Cont'd
Employees of franchise holders —Cont'd
Misdemeanors —Cont'd
Percentage of employees required to be registered voters in Arkansas.
Failure to comply with order for adjustment, §23-110-308.
Penalties.
Applications for employment.
False information, §23-110-308.
Percentage of employees required to be registered voters in Arkansas.
Failure to comply with order for adjustment, §23-110-308.
Registered voters in Arkansas.
Percentage of employees required to be, §23-110-308.
Time for adjustment, §23-110-308.
Fees.
Franchises to conduct horse races, §23-110-305.
Licenses.
Disposition of fees, §23-110-104.
Racing meets, §23-110-403.
Franchises to conduct horse races.
Applications for franchises, §23-110-302.
Bond of franchise holder, §23-110-414.
Construction of racing plant, §23-110-305.
Elections.
Approval of electors, §23-110-303.
Ballots, §23-110-304.
Conduct of elections, §23-110-304.
Contests, §23-110-304.
Continuing horse racing in county.
Special election, §23-110-306.
Notice, §23-110-304.
Proclamation of result, §23-110-304.
Subsequent elections, §23-110-306.
Fees, §23-110-305.
Franchises granted prior to July 1, 1957, §23-110-307.
Granting of franchises, §23-110-301.
Approval of electors required, §23-110-303.
Granted prior to July 1, 1957, §23-110-307.
Limitations on issuance, §23-110-301.
Hearing on application for franchise, §23-110-302.
Number of franchises.
Limitations, §23-110-301.

HORSE RACING —Cont'd
Franchises to conduct horse races —Cont'd
Refusal to grant, §23-110-302.
Appeal, §23-110-302.
Temporary franchise, §23-110-302.
Franchise issued in exchange for temporary franchise, §23-110-305.
Wagering.
Disposition of money wagered.
Portion for franchise holder, §23-110-407.
Funds.
Wagering.
Arkansas racing commission purse and awards funds, §23-110-409.
Hearings.
Franchises to conduct horse races.
Hearing on application, §23-110-302.
Racing commission, §23-110-205.
Horse owners.
Criminal background checks, §23-110-204.
Horse trainers.
Criminal background checks, §23-110-204.
Investigations.
Racing commission, §23-110-413.
Jockeys and jockey agents.
Criminal background checks, §23-110-204.
Legalized, §23-110-301.
Licenses.
Criminal background checks.
Horse owners, trainers, jockeys and jockey agents, §23-110-204.
Fees.
Disposition of fees, §23-110-104.
Racing meets, §23-110-403.
Racing meets, §23-110-403.
Applications, §23-110-403.
Fee, §23-110-403.
Holding without license.
Penalties, §23-110-401.
Number of meets.
Limitation on, §23-110-402.
Required, §23-110-403.
Minors.
Wagering.
Prohibited for persons under 18, §23-110-405.
Notice.
Franchises to conduct horse races.
Elections, §23-110-304.
Continuing horse races in county.
Results of election, §23-110-306.

HORSE RACING —Cont'd
Notice —Cont'd
Racing meets.
Sunday racing.
Notice of election, §23-110-402.
Oaths.
Racing commission.
Oath of office of members, §23-110-201.
Passes.
Distribution, §23-110-105.
Maximum number, §23-110-105.
Penalties.
Disposition of fines, §23-110-104.
Employees of franchise holders.
Applications for employment.
False information, §23-110-308.
Percentage of employees required to be registered voters in Arkansas.
Failure to comply with order for adjustment, §23-110-308.
Failure of franchise holders to pay taxes, §23-110-415.
Racing meets.
Holding racing meet without license, §23-110-401.
Subpoenas of racing commission.
Noncompliance, §23-110-205.
Racing commission.
Appointment of members, §23-110-201.
Conflicts of interest.
Persons prohibited from membership, §23-110-201.
Creation, §23-110-201.
Duties.
Generally, §23-110-204.
Expenses of members, §23-110-201.
Hearings, §23-110-205.
Investigations, §23-110-413.
Meetings, §23-110-203.
Number of members, §23-110-201.
Oath of office of members, §23-110-201.
Officers, §23-110-202.
Per diem of members, §23-110-201.
Powers and duties.
Generally, §§23-110-204, 23-110-205.
Qualifications of members, §23-110-201.
Persons prohibited from membership, §23-110-201.
Quorum, §23-110-203.
Removal of members, §23-110-201.
Right of entry, §23-110-413.
Secretary.
Bonds, surety, §23-110-202.
HORSE RACING —Cont'd
Racing commission —Cont'd
Secretary —Cont'd
Director of department of finance and administration, §23-110-202.
Duties, §23-110-202.
Employment of personnel, §23-110-202.
Terms of members, §23-110-201.
Wagering on electronic games of skill, §§23-113-301 to 23-113-304.
Racing meets.
Admission tax, §23-110-411.
Elections.
Sunday racing, §23-110-402.
Licenses, §23-110-403.
Applications, §23-110-403.
Fee, §23-110-403.
Holding without license.
Penalties, §23-110-401.
Number of meets.
Limitation on, §23-110-402.
Required, §23-110-403.
Misdemeanors.
Holding racing meet without license, §23-110-401.
Notice.
Sunday racing.
Notice of election, §23-110-402.
Number of days in one meet, §23-110-402.
Number of meets during year, §23-110-402.
Penalties.
Holding racing meet without license, §23-110-401.
Racing programs.
Submission for approval, §23-110-402.
Sunday racing, §23-110-402.
Wagering programs.
Submission for approval, §23-110-402.
Writing various races for each racing meet.
Franchise holder responsible for, §23-110-409.
Racing passes.
Distribution, §23-110-105.
Maximum number, §23-110-105.
Records.
Franchise holders, §23-110-412.
Racing commission to have access to records, §23-110-413.
Subpoenas.
Racing commission.
Powers, §23-110-205.

HORSE RACING —Cont'd
Sunday.
Racing meets.
Sunday racing, §23-110-402.
Taxation.
Admission tax, §23-110-411.
Disposition of taxes, §23-110-104.
Telephone or mobile devices.
Patrons with money on deposit placing wagers by, §23-110-405.
Title of law.
Short title, §23-110-101.
Wagering.
Breaks, computing, §23-110-410.
Disposition of money wagered.
Arkansas racing commission purse and awards fund, §23-110-409.
Breaks, §23-110-410.
Funds.
Arkansas racing commission purse and awards fund, §23-110-409.
Generally, §23-110-406.
Payment to winning bettors required, §23-110-406.
Portion for franchise holder, §23-110-407.
Minors.
Wagering by persons under 18 prohibited, §23-110-405.
Misdemeanors.
Forms of wagering other than pari-mutuel or certificate method, §23-110-405.
Pari-mutuel or certificate method.
Authorized at licensed track, §23-110-405.
Penalties.
Forms of wagering other than pari-mutuel or certificate method, §23-110-405.
Races run at other race tracks shown live by television or otherwise.
Franchise holder may enter into agreements whereby patrons may wager on, §23-110-405.
Racing meets.
Wagering programs.
Submission for approval, §23-110-402.
Statutes prohibiting betting on racing.
Inapplicable, §23-110-102.
Telephone or mobile devices.
Patrons with money on deposit placing wagers by, §23-110-405.

HORSE RACING —Cont'd
Wagering on electronic games of skill, §§23-113-101 to 23-113-604.
Arkansas thoroughbred and greyhound breeding activities.
Contributions to purses and promotion of, §23-113-401.
Citation of act, §23-113-102.
Conditions and limitations, §23-113-201.
Conflict of laws, §23-113-602.
Contributions to purses and promotion of Arkansas thoroughbred and greyhound breeding activities, §23-113-401.
Criminal background checks.
Employees and suppliers, §23-113-303.
Definitions, §23-113-103.
Licenses.
Employees and suppliers, §23-113-303.
Fees, penalties and fines, disposition of, §23-113-604.
Local option election.
Authorization subject to approval by, §23-113-201.
Pari-mutuel wagering, §23-113-603.
Privilege fees.
Disposition, §23-113-604.
Payment in lieu of taxes, §23-113-501.
Public policy, §23-113-101.
Racing commission, §§23-113-301 to 23-113-304.
Adverse commission action, §23-113-304.
Hearings, §23-113-304.
Jurisdiction, §23-113-301.
Licenses for employees and suppliers, §23-113-303.
Powers and duties, §23-113-302.
Recordkeeping requirements, §23-113-601.
Title of act, §23-113-102.
Witnesses.
Racing commission.
Powers as to, §23-110-205.

HOSPICE CARE.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Health insurance.
Group and blanket health insurance, §23-86-120.

HOSPICE CARE —Cont'd
Health insurance —Cont'd
Offered to master disability insurance group contract holder, §23-68-120.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

HOSPITAL AND MEDICAL SERVICE CORPORATIONS.
Annual report and examination, §23-75-114.
Appeals.
Review of decisions, §23-75-118.
Applicability of provisions, §23-75-103.
Limited application, §23-75-104.
Miscellaneous provisions, §23-75-102.
Articles of incorporation, amendment, §23-75-106.
Bylaws, amendment, §23-75-106.
Cancer.
Mammogram screening of occult breast cancer.
Coverage generally, §23-79-140.
Certificates of authority.
Application, §23-75-107.
Contents, §23-75-107.
Fees, §23-75-107.
Requirements, §23-75-108.
Charities.
Donations.
Power to make donations for the public welfare, §23-75-121.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Consumer choice in health insurance, §§23-79-801 to 23-79-805.
Contracts.
Subscription contracts, §23-75-111.
Conversion to legal reserve mutual life insurer, §23-75-122.
Approval of conversion plan, §23-75-122.
Time for completion of conversion, §23-75-122.
Craniomandibular disorder.
Optional coverage to be offered, §23-79-150.
Dental plans.
Fees for noncovered services.
Agreement between insurers and dentists, §23-63-115.
Dental point of service option, §§23-99-601 to 23-99-608.
Deposits.
Protection of subscribers, §23-75-109.

HOSPITAL AND MEDICAL SERVICE CORPORATIONS —Cont'd
Deposits —Cont'd
Required, §23-75-109.
Diabetes coverage, §§23-79-601 to 23-79-607.
Directors.
Qualifications, §23-75-112.
Donations.
Power to make donations for the public welfare, §23-75-121.
Entitlement notwithstanding policy provisions.
Health services performed by professionals not licensed under Arkansas medical practices act, §23-79-114.
Services performed by outpatient centers, §23-79-115.
Examinations.
Annual report and examination, §23-75-114.
Exclusive nature of provisions, §23-75-103.
Expenses, §23-75-113.
Fees.
Certificates of authority, §23-75-107.
Health insurance.
Consumer choice in health insurance, §§23-79-801 to 23-79-805.
Incorporation.
Requirements, §23-75-106.
Insurance.
Conversion to legal reserve mutual life insurer, §23-75-122.
Approval of conversion plan, §23-75-122.
Time for completion of conversion, §23-75-122.
Investments, §23-75-113.
Judicial review of decisions, §23-75-118.
Liability.
Nonliability of corporation, §23-75-116.
Limited application of chapter, §23-75-104.
Mammograms.
Coverage for mammogram screening of occult breast cancer.
Generally, §23-79-140.
Mental health.
Psychological examiner coverage, §23-79-142.
Minors.
Children's Preventive Health Care Act.
Generally, §23-79-141.
Nonliability of corporation, §23-75-116.

HOSPITAL AND MEDICAL SERVICE CORPORATIONS —Cont'd
Outpatient centers.
Services performed by.
Entitlement notwithstanding policy provisions, §23-79-115.
Participating hospitals and physicians, §23-75-110.
Physicians and surgeons.
Participating hospitals and physicians, §23-75-110.
Professionals not licensed under Arkansas medical practices act.
Health services performed by.
Entitlement notwithstanding policy provisions, §23-79-114.
Recoupment from medical providers, §§23-63-1801 to 23-63-1807.
Relationship of physician and patient, §23-75-105.
Policies.
Subscription contracts, §23-75-111.
Prescription drug benefits, §23-79-149.
Provisions exclusive, §23-75-103.
Quarterly reports, §23-75-114.
Recoupment from medical providers, §§23-63-1801 to 23-63-1807.
Relationship of physician and patient, §23-75-105.
Reports.
Annual reports, §23-75-114.
Quarterly reports, §23-75-114.
Review of decisions, §23-75-118.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Service corporations.
Defined, §23-75-101.
Subrogation recovery, §23-79-146.
Subscription contracts, §23-75-111.
Substance abuse coverage, §23-79-139.
Surpluses.
Use, §23-75-115.
Taxation.
Exemptions, §23-75-120.
Premium tax, §23-75-119.
Temporomandibular joint disorder.
Optional coverage to be offered, §23-79-150.

HOSPITALS AND OTHER HEALTH FACILITIES.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.

HOSPITALS AND OTHER HEALTH FACILITIES —Cont'd
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Railroads.
Employees of railroads.
Facilities to be furnished, §23-12-508.
Taxation.
Exemption from taxation.
Hospital and medical service corporations, §23-75-120.

HUMAN TRAFFICKING.
National human trafficking resource center hotline.
Posting information about, §23-12-614.

HUSBAND AND WIFE.
Insurance.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.
Policies.
Married woman's right to insure husband's life, §23-79-128.

I

IDENTIFICATION.
Railroad police, §23-12-705.

IMMUNITY.
Arkansas earthquake authority, §23-102-106.
Bank department.
Staff, §23-46-206.
Comprehensive health insurance pool.
Board not liable for obligations of pool, §23-79-504.
Collective actions, §23-79-512.
Fraternal benefit societies.
Benefits.
Attachment, garnishment or other process.
Benefits not liable for, §23-74-403.
Supreme governing body.
Officers and members.
Not personally liable for benefits provided, §23-74-203.
Hospital and medical service corporations.
Nonliability of corporation, §23-75-116.
Industrial loan institutions.
Limitation on liability, §23-36-109.

IMMUNITY —Cont'd
Insurance.
Commissioner.
Examination of insurers, §23-61-208.
Direct actions, §23-79-210.
Fraudulent insurance acts prevention, §23-66-506.
Life and health insurance guaranty association, §23-96-108.
Property and casualty actuarial opinion law.
Immunity of appointed actuary, §23-63-1904.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Risk-sharing plans for property and casualty insurance.
Commissioner, representatives or any plan, its participants or employees, §23-95-107.
Unfair competition and trade practices.
Persons attending or testifying at hearings, §23-66-214.
Life settlements.
Examination of licensees or applicants, §23-81-807.
Reporting of fraudulent life settlement acts, §23-81-814.
Lotteries.
Sovereign immunity of state, §23-115-208.
Property and casualty actuarial opinion law.
Immunity of appointed actuary, §23-63-1904.
Risk-based capital act.
Employees or agents of insurance department, §23-63-1312.
Risk-based capital requirements for health organizations.
Insurance commissioner and employees of insurance department, §23-63-1511.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Rural telecommunications cooperatives.
Connecting companies or cooperatives, §23-17-235.
Debts of cooperatives.
Nonliability of members and shareholders, §23-17-233.
Securities regulation.
Civil liability, §23-42-106.

IMPROVEMENT DISTRICTS.
Insurance.
Investments.
Obligations of improvement districts, §23-63-810.

INCOME TAX.
Credits.
Medically necessary foods or protein modified food products.
Individuals or families with children with phenylketonuria, §23-79-702.
Definitions, §23-79-701.
Electric utility storm recovery securitization financing.
Income tax on receipts, §23-18-910.
Lotteries.
Prizes subject to tax, §23-115-403.
Withholding of tax.
Powers of lottery commission, §23-115-205.
Medically necessary foods or protein modified food products.
Tax credit.
Individuals or families with children with phenylketonuria, §23-79-702.
Definitions, §23-79-701.
Withholding.
Lotteries.
Commission powers, §23-115-205.

INCOME WITHHOLDING.
Insurance.
Minimum basic benefit policies.
Payroll deduction, §23-98-108.

INDEMNIFICATION.
Electric cooperative corporations, §23-18-307.
Farmers' mutual aid associations, §23-73-123.
Fraternal benefit societies.
Persons indemnified and reimbursed by societies, §23-74-203.
Health insurance marketplace.
Board members and employees, §23-61-803.
Insurance.
Reciprocal insurers, §§23-70-101 to 23-70-124.
Use of credit information for personal insurance.
Holding agents harmless against liability, §23-67-410.

INDEMNIFICATION —Cont'd
Rural telecommunications cooperatives.
Directors, officers, employees or agents, §23-17-238.

INDIGENT PERSONS.
Greyhound racing.
Racing meets.
Additional racing days.
Use of revenue derived from, §23-111-505.
Railroads.
Free carriage.
Authorized, §23-4-807.

INDUSTRIAL LIFE INSURANCE, §§23-82-101 to 23-82-118.

INDUSTRIAL LOAN INSTITUTIONS.
Bank commission.
Taking charge of institution.
Grounds for commissioner to take charge of institution, §23-36-116.
Bankruptcy and insolvency.
Bank commissioner taking charge of institution, §23-36-116.
Board of directors.
Dividends.
Declaring dividends, §23-36-115.
Loans to officers, directors or employees prohibited, §23-36-111.
Ownership of stock, §23-36-103.
Qualification of directors, §23-36-103.
Choses in action.
Reserves required, §23-36-113.
Claims against estate of liquidated institution, §23-36-116.
Commissioner.
Taking charge of property and affairs of institution, §23-36-116.
Creditors.
Classification, §23-36-117.
Corporate title, §23-36-104.
Defaults.
Grounds for bank commission to take charge of institution, §23-36-116.
Payment of installments, §23-36-112.
Late charges, §23-36-112.
Definitions, §23-36-101.
Dividends.
Declaring dividends, §23-36-115.
Enforcement of act.
Rules and regulations, §23-36-105.
Examinations.
Fees for examinations, §23-36-107.
State bank commissioner to examine, §23-36-105.

INDUSTRIAL LOAN INSTITUTIONS —Cont'd
Funds.
Deposit of funds, §23-36-114.
Impairment of capital.
Grounds for bank commission taking charge, §23-36-116.
Insurance.
Loans insured by federal government, §23-36-110.
Investment certificates.
Reserves required, §23-36-113.
Liability.
Limitation on liability, §23-36-109.
Liquidation and distribution of assets.
Commissioner taking charge of institution, §23-36-116.
Notice.
Claims against estate of liquidated institution, §23-36-116.
Commissioners taking charge of institution, §23-36-116.
Possession of business and property.
Commissioner taking charge of, §23-36-116.
Powers.
Generally, §23-36-108.
Prohibited loans.
Officer, director or employee loans prohibited, §23-36-111.
On own stock, §23-36-111.
Reserves.
Establishment of reserve against choses in actions, investment certificates, etc., §23-36-113.
Resumption of business.
After commissioner takes charge of institution, §23-36-116.
Rules and regulations.
Enforcement of act, §23-36-105.
State bank commissioner.
Examination by state bank commissioner, §23-36-105.
Fees for examination, §23-36-107.
Statement of assets and liabilities.
Call of commissioner, §23-36-106.
Statement of assets and liabilities.
State bank commissioner.
Call of commissioner, §23-36-106.
Stock and stockholders.
Ownership of stock.
Board of directors, §23-36-103.
Residents of state, §23-36-102.
Taking charge of institution.
Bank commission.
Grounds for commissioner to take charge of institution, §23-36-116.

INDUSTRIAL LOAN INSTITUTIONS —Cont'd
Title of corporations, §23-36-104.
United States.
Loans insured by federal government, §23-36-110.

INJUNCTIONS.
Banks.
Dissolution and liquidation.
Injunction against commissioner, §23-49-103.
Charitable bingo and raffles, §23-114-704.
Choice of health care providers by patients.
Enforcement of any willing provider laws, §23-99-803.
Enforcement of provisions by providers, §23-99-207.
Continuing care providers.
Enforcement of chapter, §23-93-104.
Fraternal benefit societies.
Domestic societies.
Grounds, §23-74-606.
Procedures, §23-74-606.
Recognition of proceedings.
Application or petition required to be made by attorney general, §23-74-608.
Insurance.
Delinquency proceedings, §23-68-105.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Holding companies.
Mutual insurance holding companies, §23-69-321.
Violations of provisions, §23-63-521.
Risk retention and purchasing groups.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Life settlements.
Fraudulent life settlement acts, §23-81-815.
Loan brokers.
Advance fee loan brokers.
Violations of subchapter, §23-39-405.
Lotteries.
Retailers continuing to operate after injunction of business, §23-115-609.
Mortgage bankers, brokers and servicers.
Discipline of licensees, §23-39-514.

INJUNCTIONS —Cont'd
Motor carriers.
Transportation commission.
Jurisdiction.
Mandatory injunction that commission take jurisdiction, §23-13-209.
Violation of subchapter, §23-13-261.
Pipelines.
Safety act.
Violations of provisions, §23-15-212.
Professional employer organizations.
Penalties for violations, §23-92-412.
Railroads.
Crossings.
Improper crossing of highway and railroad, §23-12-306.
Recreational vehicle franchises, §23-112-1023.
Risk retention and purchasing groups.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Savings and loan associations.
Enforcement of chapter by injunction, §23-37-212.
Securities regulation.
Commissioner.
Enforcement of act by injunction, §23-42-209.
Trust companies.
Dissolution and liquidation.
Injunction against commissioner, §23-49-103.

INSPECTIONS.
Amusements.
Amusement ride and amusement attraction safety insurance.
Safety inspections, §§23-89-504, 23-89-507.
Charitable bingo and raffles.
Premises of raffle or game of bingo, §23-114-703.
Life settlements.
Examination of business affairs, §23-81-807.
Motor carriers.
Transportation commission, §23-13-102.
Public utilities.
Books, papers, reports and statements, §23-2-309.
Refusal to permit inspection.
Effect, §23-2-312.

INSPECTIONS —Cont'd
Railroads.
Safe transportation of railroad employees by contract carriers.
Inspection of vehicle, §23-16-506.
State highway commission.
Crossings.
Proposed road or street crossing, §23-12-304.
Transportation commission, §23-12-102.

INSTALLMENT CONTRACTS.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

INSURANCE.
Accident insurance.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Accountants.
Examination of insurers.
Commissioner may retain certified public accountant, §23-61-203.
Acquisitions involving insurers not otherwise covered.
Applicability of provisions, §23-63-526.
Inapplicable provisions, §23-63-530.
Competitive standard, §23-63-528.
Definitions, §23-63-525.
Orders and penalties, §23-63-529.
Preacquisition notification, §23-63-527.
Waiting period, §23-63-527.
Actions.
Casualty insurance.
No liability or cause of action against person for information or statements relating to cancellation or nonrenewal of policies, §23-89-308.
Commissioner.
Enforcement powers, §23-61-110.
Direct actions, §23-79-210.
Health insurance.
Legal actions, §23-85-116.
Mutual assessment life and disability insurers.
Venue and service of process, §23-72-120.
Reciprocal insurers.
Name used in suits, §23-70-104.
Surplus lines.
Insurers may be sued, §23-65-318.
Service of process, §23-65-318.

INSURANCE —Cont'd
Actions —Cont'd
Unauthorized insurers.
Defense of action, §23-65-205.
Suits by unauthorized insurers prohibited, §23-65-102.
Actuaries.
Examination of insurers.
Commissioner may retain independent actuaries, §23-61-203.
Property and casualty actuarial opinion law, §§23-63-1901 to 23-63-1905.
Adoption.
Health insurance.
Coverage for adopted minors, §23-79-137.
Advertising.
False advertising.
Federal or state government endorsement, §23-66-609.
Life and health insurance guaranty association act.
Advertisement of act in insurance sales.
Prohibited, §23-96-105.
Property and casualty insurance guaranty.
Prohibited advertisements or statements, §23-90-121.
Unfair competition and trade practices.
Prior approval required, §23-66-316.
Agriculture.
Farmers' mutual aid associations, §§23-73-101 to 23-73-123.
Alcoholic beverages.
Care and treatment of alcohol and drug dependency.
Insurers transacting health, accident or disability insurance in state.
Requirements of group policies, contracts and plans providing hospital and medical coverage, §23-79-139.
Health insurance.
Policy provisions, §23-85-126.
Alien insurers.
Defined, §23-60-102.
Domicile, §23-63-104.
Ambulances.
Direct reimbursement for ambulance services, §23-79-148.
Amendments.
Certificates of authority, §23-63-211.

INSURANCE —Cont'd
Amendments —Cont'd
Domestic stock and mutual insurers.
Articles of incorporation, §23-69-107.
Farmers' mutual aid associations.
Articles of association or bylaws, §23-73-111.
Mutual assessment life and disability insurers.
Bylaws, §23-72-110.
Annuities.
Guaranty association.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Annulment of marriage.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.
Anti-arson applications, §§23-88-201 to 23-88-210.
Antifraud assessment, §§23-100-104, 23-100-105.
Appeals.
Burial associations.
Revocation of certificates of authority, §§23-78-124, 23-78-125.
Commissioner.
Decisions of commissioner, §23-61-307.
Credit life and disability insurance.
Parties aggrieved by decisions of commissioner, §23-87-119.
Delinquency proceedings, §23-68-103.
Holding companies.
Acts or determinations of commissioner, §23-63-519.
Material transactions disclosures, §23-63-1406.
Policies.
Commercial property and casualty insurance policies.
Appeals from orders of commissioner, §23-79-309.
Property and casualty insurance guaranty.
Rulings of commissioner, §23-90-123.
Rural risk underwriting association.
Applicants for policy, persons insured under plan and others affected by plan may appeal to commissioner, §23-88-309.
Appearances.
Unfair competition and trade practices.
Hearings, §23-66-209.

INSURANCE —Cont'd
Application of code, §23-60-103.
Exempted organizations and activities, §23-60-104.
Particular provisions prevail, §23-60-105.
Appraisers.
Examination of insurers.
Commissioner may retain appraisers, §23-61-203.
Arkansas rural risk underwriting association, §§23-88-301 to 23-88-309.
Arson.
Anti-arson applications, §§23-88-201 to 23-88-210.
Articles of association.
Farmers' mutual aid associations, §23-73-106.
Amendment, §23-73-111.
Assessments.
Burial associations.
Membership dues and assessments, §23-78-116.
Delinquency proceedings.
Order and levy of assessment, §23-68-131.
Prima facie correct, §23-68-132.
Report and petition for assessment, §23-68-130.
Domestic stock and mutual insurers.
Stockholders or members, §23-69-139.
Life and health insurance guaranty association.
Assessment of member insurers, §23-96-115.
Mutual assessment life and disability insurers.
Additional assessments, §23-72-112.
Pro rata assessment plans.
Defined, §23-72-101.
Guidelines for transactions, §23-72-107.
Reclassification and rearrangement of members, §23-72-116.
Special provisions, §23-72-111.
Property and casualty insurance guaranty.
Accounting for and repayment of assessments, §23-90-114.
Claims, §23-90-112.
Taxation.
Credit against taxes, §23-90-119.
Reciprocal insurers, §23-70-118.
Nonassessable policies, §23-70-120.

INSURANCE —Cont'd
Assessments —Cont'd
Reciprocal insurers —Cont'd
Time limit for assessments, §23-70-118.
Rural risk underwriting association.
Governing board empowered to make, §23-88-306.
Assets.
Conflicts in treatment of, §23-63-610.
Deductions from liabilities, §23-63-602.
Defined, §23-63-601.
Delinquency proceedings.
Attachment and garnishment, §23-68-120.
Borrowing on pledge of assets, §23-68-123.
Deposits.
Assignment or conveyance of securities or assets, §23-63-906.
Domestic stock and mutual insurers.
Dissolution.
Distribution of assets to stockholders, §23-69-154.
Impairment of capital or assets, §23-69-138.
Liquidation.
Mutual member's share of assets upon liquidation, §23-69-155.
Limitations, §23-63-603.
Purpose of provisions, §23-63-612.
Reciprocal insurers.
Liquidation of companies.
Subscribers' share in assets, §23-70-122.
Assigned risk.
Casualty insurance.
Eligibility for automobile liability insurance through automobile liability assigned risk plan, §23-89-307.
Assignments.
Deposits.
Conveyance or assignment of securities or assets, §23-63-906.
Group annuities and group life insurance.
Right of insured to assign any or all of his rights or incidents of ownership under policy, §23-83-125.
Assignment without prejudice, §23-83-126.
Life and health insurance guaranty association.
Assignment rights, §23-96-114.
Associations.
Burial associations, §§23-78-101 to 23-78-125.

INSURANCE —Cont'd
Associations —Cont'd
Farmers' mutual aid associations, §§23-73-101 to 23-73-123.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Attachment.
Delinquency proceedings.
Assets, §23-68-120.
Mutual assessment life and disability insurers.
Benefits not subject to attachment, §23-72-114.
Stipulated premium insurers.
Benefits not subject to attachment, §23-71-112.
Attorneys at law.
Actions.
Suits against insurers.
Damages and attorney's fees on loss claims, §23-79-208.
Examination of insurers.
Commissioner may retain attorneys, §23-61-203.
Legal insurance, §§23-91-201 to 23-91-227.
Reciprocal insurers.
Bonds, surety, §23-70-110.
Action on bond, §23-70-110.
Deposit in lieu of bond, §23-70-110.
Power of attorney, §23-70-108.
Banks.
Investments.
International banks, §23-63-813.
Beneficiaries.
Health insurance.
Change of beneficiary, §23-85-117.
Industrial life insurance.
Policies.
Designation of beneficiary on policies, §23-82-114.
Benefits.
Casualty insurance.
Exclusion of benefits, §23-89-205.
Minimums, §23-89-201.
Payments under coverage, §23-89-208.
Reimbursement.
Insurers' rights of reimbursement, §23-89-207.
Children's Preventive Health Care Act, §23-79-141.
Industrial life insurance.
Nonforfeiture benefits, §23-82-110.

INSURANCE —Cont'd
Benefits —Cont'd
Life and health insurance guaranty association.
Assignment or subrogation of rights, §23-96-114.
Liability, §23-96-114.
Life insurance.
Fixed amounts, §23-81-402.
Payment in fixed and/or variable amounts, §23-81-402.
Variable amounts, §23-81-402.
Minimum basic benefit policies, §23-98-106.
Mutual assessment life and disability insurers.
Adjustments of rates or benefits, §23-72-112.
Attachment, §23-72-114.
Level or stipulated plan insurers, §23-72-113.
Stipulated premium insurers.
Attachment, §23-71-112.
Binders.
Policies, §23-79-120.
Bond issues.
Investments.
Corporate bonds and debentures, §23-63-814.
Improvement district obligations, §23-63-810.
Local industrial development bonds, §23-63-811.
Municipal or county utilities, §23-63-809.
Public obligations, §23-63-808.
United States government obligations, §23-63-806.
Bonds, surety.
Commissioner, §23-61-102.
Managing general agents, §23-64-403.
Mutual assessment life and disability insurers, §23-72-105.
Reciprocal insurers.
Attorneys at law, §23-70-110.
Action on bond, §23-70-110.
Deposit in lieu of bond, §23-70-110.
Risk management.
Procurement of insurance or surety bonding under emergency conditions, §23-61-606.
Surety insurers, §§23-63-1001 to 23-63-1004.
Estoppel, §23-63-1004.
Expenses, §23-63-1001.
Individual rights, §23-63-1003.

INSURANCE —Cont'd
Bonds, surety —Cont'd
Surety insurers —Cont'd
Sole surety on official bonds, §23-63-1002.
Court, judicial and other bonds, §23-63-1001.
Burial insurance associations, §§23-78-101 to 23-78-125.
Bylaws.
Farmers' mutual aid associations, §23-73-110.
Amendments, §23-73-111.
Mutual assessment life and disability insurers, §23-72-109.
Amendments, §23-72-110.
Filing, §23-72-110.
Cancellation of policies or contracts.
Prohibited grounds, §23-63-110.
When insured not at fault, §23-79-152.
Captions not to affect meaning, §23-60-107.
Captive insurance companies, §§23-63-1601 to 23-63-1623.
Carriers.
Uninsured motorist liability insurance, §§23-16-301 to 23-16-304.
Cease and desist orders.
Unfair competition and trade practices, §§23-66-210, 23-66-212.
Penalties for violations, §23-66-211.
Certificates.
Children's Preventive Health Care Act.
Required provisions, §23-79-141.
Credit life and disability insurance.
Forms.
Filing, approval and withdrawal of forms, §23-87-112.
Policies.
Delivery of policy or certificate, §23-87-111.
Provisions of policies and certificates.
Disclosure to debtors, §23-87-110.
Group and blanket health insurance.
Policies.
Applications and certifications, §23-86-103.
Life insurance.
Deposits.
Fees for certificate, §23-81-131.
Policies.
Commissioner's certificate on policy, §23-81-131.
Certificates of authority.
Farmers' mutual aid associations.
Qualifications, §23-73-112.

INSURANCE —Cont'd
Certificates of authority —Cont'd
Mutual assessment life and disability insurers.
Refusal or revocation.
Grounds, §23-72-106.
Property and casualty insurance guaranty.
Suspension or revocation, §23-90-113.
Reciprocal insurers.
Issuance, §23-70-107.
Certificates of deposit.
Investments, §23-63-836.
Checks.
Prompt processing by insurer, §23-63-107.
Children's Preventive Health Care Act.
Benefits, §23-79-141.
Certificates.
Required provisions, §23-79-141.
Contracts.
Required provisions, §23-79-141.
Coverage.
Periodic physical examination, §23-79-141.
Definitions, §23-79-141.
Health insurance, §23-79-141.
Periodic physical examinations.
Coverage for, §23-79-141.
Defined, §23-79-141.
Policies.
Required provisions, §23-79-141.
Purposes of section, §23-79-141.
Claims.
Credit life and disability insurance.
Reporting, §23-87-115.
Deposits.
Payment of claims out of deposit, §23-63-909.
Health insurance.
Forms, §23-85-111.
Standard claims form required, §23-85-136.
Notice of claim, §23-85-110.
Payment of claims.
Policy provision for payment of claims, §23-85-114.
Time of payment provision, §23-85-113.
Life insurance.
Interest on proceeds, §23-81-118.
Payment, §23-81-113.
Premiums to accompany proceeds, §23-81-118.
Liquidation.
Allowance of certain claims, §23-68-128.

INSURANCE —Cont'd
Claims —Cont'd
Liquidation —Cont'd
Foreign insurance companies, §23-68-117.
Form, §23-68-118.
Hearings, §23-68-118.
Nonresidents claims against domestic insurers, §23-68-116.
Notice, §23-68-118.
Priority of certain claims, §23-68-119.
Priority of claims for compensation, §23-68-126.
Legislative intent, §23-68-134.
Time to file, §23-68-129.
Loss information.
Policyholder's right to information, §23-63-111.
Surplus lines insurance, §23-65-311.
Mutual assessment life and disability insurers.
Scaling of claims.
Notice to members, §23-72-115.
Payment.
Prompt processing by insurer, §23-63-107.
Policies.
Health, medical or surgical plan or accident claims of $300 or less.
Nonpayment.
Penalty for late or nonpayment of claim, §23-79-135.
Waiver, §23-79-127.
Prompt processing of payment, §23-63-107.
Property and casualty insurance guaranty.
Applicability of chapter, §23-90-111.
Estimation of amount needed to pay claims, §23-90-112.
Notification of insureds, §23-90-111.
Payment, §23-90-115.
Covered claims, §23-90-115.
Estimation of amount needed to pay claims, §23-90-112.
Right of recovery, §23-90-117.
Rehabilitation.
Allowance of certain claims, §23-68-128.
Foreign insurance companies, §23-68-117.
Form, §23-68-118.
Hearings, §23-68-118.
Nonresidents claims against domestic insurers, §23-68-116.
Notice, §23-68-118.

INSURANCE —Cont'd
Claims —Cont'd
Rehabilitation —Cont'd
Priority of claims, §§23-68-119, 23-68-126.
Legislative intent, §23-68-134.
Time to file, §23-68-129.
Settlement of claims.
Notice of terms of settlement, §23-63-112.
Unfair competition and trade practices.
False claims or proofs, §23-66-301.
Code.
Application of code as to particular types of insurers, §23-60-103.
Commercial general liability insurance, §23-79-155.
Commercial property and casualty insurance policies.
Minimum standards, §§23-79-301 to 23-79-312.
Commissioner of insurance.
Annual report, §23-61-112.
Health insurance fraud, §23-61-116.
Appeals from commissioner, §23-61-307.
Appointment, §23-61-102.
Assistants, §23-61-104.
Bond, surety, §23-61-102.
Books and records.
Certified copies and certificates, §23-61-107.
Examinations, §23-61-204.
Keeping, §23-61-107.
Cease and desist orders, §23-61-103.
Choice of health care providers by patients.
Enforcement of any willing provider laws, §23-99-803.
Compensation, §23-61-102.
Conduct of hearings, §23-61-305.
Confidentiality of information.
Books and records, §23-61-107.
Conflicts of interest, §23-61-106.
Continuing care providers, §§23-93-101 to 23-93-114.
Defined, §23-60-102.
Delegation of powers, §23-61-103.
Deputies, §23-61-104.
Documents as evidence, §23-61-102.
Duties.
Generally, §23-61-103.
Enforcement powers, §23-61-103.
Evidence.
Hearings, §23-61-301.
Examination expenses, §23-61-206.

INSURANCE —Cont'd
Commissioner of insurance —Cont'd
Examination of insurers, §23-61-201.
Accountants.
Power to retain certified public accountant, §23-61-203.
Actuaries.
Power to retain independent actuaries, §23-61-203.
Appraisers.
Power to retain appraiser, §23-61-203.
Attorneys at law.
Power to retain attorneys, §23-61-203.
Conduct of examination, §23-61-204.
Confidentiality of ancillary information, §23-61-207.
Examiners, §23-61-203.
Immunity from liability, §23-61-208.
Examination of managers and promoters, §23-61-202.
Conduct of examination, §23-61-204.
Examination reports, §23-61-205.
Expense allowance, §23-61-105.
Fees.
Disposition, §23-61-402.
Schedule of fees, §23-61-401.
Fraudulent insurance acts.
Investigative authority, §23-66-504.
General powers and duties, §23-61-103.
Health insurance fraud.
Annual report, §23-61-116.
Hearings.
Conduct, §23-61-305.
Evidence, §23-61-301.
Immunity from prosecution, §23-61-302.
Notice, §23-61-304.
Order on hearing, §23-61-306.
Purpose of holding, §23-61-303.
Testimony compelled, §23-61-302.
Witnesses, §23-61-301.
Liability.
Civil liability.
Absence of fraud or bad faith, §23-60-111.
Life and health insurance guaranty association.
Duties.
Generally, §23-96-118.
Examination of association, §23-96-109.
Insolvencies or impairments.
Detection and prevention, §23-96-117.

INSURANCE —Cont'd
Commissioner of insurance —Cont'd
Life and health insurance guaranty association —Cont'd
Powers.
Generally, §23-96-118.
Regulation by commissioner, §23-96-109.
Supervision of association, §23-96-109.
Malpractice, study and report on insurance rates, §23-61-114.
Minimum basic benefit policies.
Approval of forms and rates, §23-98-110.
Defined, §23-98-102.
Rules and regulations.
Notice and hearing before adoption, §23-98-103.
Notice, §23-61-109.
Hearings, §23-61-304.
Oath, §23-61-102.
Order on hearing, §23-61-306.
Orders, §23-61-109.
Policyholders' rights.
Standards to be followed by commissioner, §23-61-115.
Powers.
Delegation, §23-61-103.
Enforcement powers, §23-61-110.
Generally, §23-61-103.
Prepaid funeral benefits division, §23-40-107.
Prohibited interests and rewards, §23-61-106.
Property and casualty insurance policy simplification.
Powers, §23-80-305.
Records.
Certified copies and certificates, §23-61-107.
Examinations, §23-61-204.
Keeping, §23-61-107.
Reports.
Annual report, §23-61-112.
Health insurance fraud, §23-61-116.
Examination reports, §23-61-205.
Risk retention and purchasing groups.
Administrative and procedural authority regarding, §23-94-212.
Defined, §23-94-203.
Rules and regulations, §23-94-215.
Risk-sharing plans for property and casualty insurance, §§23-95-101 to 23-95-108.
Construction, §23-95-102.
Governing board, §23-95-103.
INSURANCE —Cont'd
Commissioner of insurance —Cont'd
Risk-sharing plans for property and casualty insurance —Cont'd
Information of individuals, §23-95-106.
Liability, §23-95-107.
Plan for coverage.
Contents, §23-95-105.
Required, §23-95-104.
Purpose, §23-95-101.
Rules and regulations, §23-95-108.
Rules and regulations.
Captive insurance companies, §23-63-1615.
Disclosure of nonpublic personal information, §23-61-113.
Financial reporting, §23-63-613.
Insurance producer licensing, §23-64-518.
Promulgation, §23-61-108.
Protected cell companies, §23-63-1709.
Rural risk underwriting association.
Certification of aggregate net direct property insurance premiums written on property by members, §23-88-308.
Definition of commissioner, §23-88-302.
Plan.
Submission to commissioner, §23-88-305.
Rules and regulations, §23-88-308.
Seal, §23-61-102.
Small employer health insurance.
Definition of "commissioner," §23-86-202.
Suspension of certain provisions.
Discretion of commissioner, §23-86-208.
Title insurance.
Examination of books and records of insurers, §23-103-406.
Rules promulgation, §23-103-415.
Unfair competition and trade practices.
Powers, §23-66-208.
Witnesses, §23-61-301.
Compliance with provisions required, §23-60-110.
Comprehensive health insurance pool, §§23-79-501 to 23-79-517.
Confidentiality of information.
Commissioner.
Examination of insurers.
Ancillary information, §23-61-207.

INSURANCE —Cont'd
Confidentiality of information —Cont'd
Disclosure of nonpublic personal information, §23-61-113.
Domestic stock and mutual insurers.
Provisions for the prevention of unfair use of information by owners, directors or officers, §23-69-205.
Fraudulent insurance acts.
Mandatory reporting, §23-66-507.
Group and blanket health insurance.
Mental health coverage, §23-86-113.
Holding companies, §23-63-517.
Mutual insurance holding companies, §23-69-320.
Records, §23-63-517.
Conflicts of interest.
Commissioner, §23-61-106.
Property and casualty insurance guaranty.
Advisory association.
Members may enter into contracts, §23-90-110.
Conservation.
Alien insurance companies.
Grounds for conservation, §23-68-108.
Foreign insurance companies.
Grounds for conservation, §23-68-108.
Grounds for conservation, §23-68-108.
Order of conservation, §23-68-112.
Protected cell companies, §23-63-1707.
Consolidations.
Domestic stock and mutual insurers.
Acquiring corporations under a plan of exchange to be separate, §23-69-147.
Effect, §23-69-145.
Exchange of stock of stock insurers, §23-69-142.
Effect of exchange under plan, §23-69-146.
Mutual insurers, §23-69-143.
Nonconsenting stockholders, §23-69-148.
Plan of exchange of shares agreement, §23-69-144.
Construction and interpretation.
Captions not to affect meaning, §23-60-107.
Credit life and disability insurance, §23-87-105.
Definitions not mutually exclusive, §23-62-101.

INSURANCE —Cont'd
Construction and interpretation —Cont'd
Particular provisions prevail, §23-60-105.
Policies.
Commercial property and casualty insurance policies.
Construed and applied in accordance with provisions of subchapter, §23-79-308.
Effect of subchapter upon prior law, §23-79-304.
Prior acts, offenses and rights.
Not affected, §23-60-106.
Risk-sharing plans for property and casualty insurance.
Effect upon prior laws, §23-95-102.
Consumer credit information, use in personal insurance, §§23-67-401 to 23-67-415.
Consumer sales protection act, §§23-66-601 to 23-66-610.
Definitions, §23-66-603.
Exemptions, §23-66-604.
Loans, §23-66-605.
Powers of commissioner in administrative proceedings, §23-66-610.
Privacy, §23-66-607.
Prohibited activities, §23-66-609.
Purpose, §23-66-602.
Regulations, §23-66-608.
Sales practices, §23-66-606.
Short title, §23-66-601.
Unfair trade practices investigations, §23-66-610.
Contributions.
Domestic stock and mutual insurers.
Authorization, §23-69-111.
Controlled substances.
Health insurance.
Policy provisions, §23-85-126.
Conversions.
Captive insurance companies, §23-63-1619.
Domestic stock and mutual insurers, §23-69-141.
Mutual assessment life and disability insurers.
Merger or bulk reinsurance or conversion, §23-72-119.
Reciprocal insurers, §23-70-123.
Stipulated premium insurers.
Legal reserve insurers, §23-71-116.
Conversion to mutual insurer.
Farmers' mutual aid association, §23-73-117.

INSURANCE —Cont'd
Conveyances.
Deposits.
Assignment or conveyance of securities or assets, §23-63-906.
Counties.
Direct actions against insurer, §23-79-210.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Credit unions.
Organization, §23-35-104.
Criminal law and procedure.
Default by insurance producer, §23-64-232.
Holding companies.
Proceedings for violations, §23-63-522.
Damages.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Unauthorized insurers.
Actions against unauthorized insurers, §23-65-205.
Debts.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Defenses.
Health insurance.
Policies.
Time limit on certain defenses, §23-85-107.
Unauthorized insurers.
Actions against, §23-65-205.
Definitions, §23-60-102.
Accident and health insurance, §23-62-103.
Acquisitions involving insurers not otherwise covered, §23-63-525.
Adjusters, §23-64-102.
Agents, §23-64-102.
Exemptions and exceptions from definitions, §23-64-103.
Amusement ride and amusement attraction safety insurance, §23-89-502.
Anti-arson applications, §23-88-202.
Assets, §23-63-601.
Brokers, §23-64-102.
Exceptions and exemptions from definitions, §23-64-103.
Burial associations, §23-78-101.
Captive insurance companies, §23-63-1601.
Casualty insurance, §23-62-105.
Cancellation of policies, §23-89-301.

INSURANCE —Cont'd
Definitions —Cont'd
Casualty insurance —Cont'd
Uninsured motor vehicles, §23-89-401.
Children's Preventive Health Care Act, §23-79-141.
Claims-made policy, §23-79-303.
Construction, §23-62-101.
Consumer protection, §23-66-603.
Credit life and disability insurance, §23-87-103.
Domestic stock and mutual insurers, §23-69-102.
Equity securities, §23-69-201.
Farmers' mutual aid associations, §23-73-101.
Fraternal benefit societies, §23-74-101.
Generally, §23-74-104.
Lodge system, §23-74-102.
Representative form of government, §23-74-103.
Fraudulent insurance act, §23-66-501.
Funding agreements, §23-62-109.
Genetic nondiscrimination in insurance act, §23-66-320.
Group and blanket health insurance.
Blanket accident and health insurance, §23-86-101.
Group accident and health insurance, §23-86-106.
Health insurance.
Outpatient coverage, §23-85-133.
Health maintenance organizations, §23-76-102.
Holding companies, §23-63-503.
Home service system of distribution, §23-66-402.
Hospital and medical service corporations, §23-75-101.
Industrial life insurance, §23-82-101.
Insurance consultant, §23-64-102.
Large commercial risks, §23-79-109.
Legal insurance, §23-91-203.
Life and health insurance guaranty association, §23-96-104.
Life insurance, §23-62-102.
Liquidation, §23-68-102.
Mammograms.
Diagnostic mammography, §23-79-140.
Screening mammography, §23-79-140.
Marine insurance, §23-62-107.
Minimum basic benefit policies, §23-98-102.
Mortgage guaranty insurance, §23-62-110.

INSURANCE —Cont'd
Definitions —Cont'd
Multiple employer trust and self-insured plans, §23-92-201.
Mutual assessment life and disability insurers.
Level or stipulated rate plans, §23-72-101.
Pro rata assessment plans, §23-72-101.
Mutual insurance holding companies, §23-69-303.
Policies, §23-79-101.
Life and health insurance policy language simplification, §23-80-203.
Premiums, §23-79-101.
Producer licensing, §23-64-502.
Property and casualty insurance guaranty, §23-90-103.
Property and casualty insurance policy simplification, §23-80-303.
Property insurance, §23-62-104.
Protected cell company act, §23-63-1703.
Rates and rating organizations, §23-67-202.
Reciprocal insurers, §23-70-101.
Rehabilitation, §23-68-102.
Resident agent, §23-64-102.
Risk-based capital requirements for health organizations, §§23-63-1501, 23-63-1503 to 23-63-1506.
Risk management, §23-61-603.
Risk retention and purchasing groups, §23-94-203.
Rural risk underwriting association, §23-88-302.
Small employer health insurance, §23-86-202.
Stipulated premium insurers, §23-71-101.
Surety insurance, §23-62-106.
Title insurance, §23-62-108.
Unfair competition and trade practices, §§23-66-203, 23-66-206.
Uninsured motor vehicles, §23-89-401.
Use of credit information in personal insurance, §23-67-404.
Dental point of service option.
Health insurance carriers, §§23-99-601 to 23-99-608.
Department of insurance.
Continuation, §23-61-101.
Defined, §23-60-102.
Purpose, §23-61-101.

INSURANCE —Cont'd
Deposits.
Appraisal, §23-63-906.
Assignment or conveyance of securities or assets, §23-63-906.
Authorized deposits, §23-63-901.
Claims.
Payment of claims out of deposit, §23-63-909.
Companies.
Requirements, §23-63-206.
Deficiency, §23-63-910.
Depositary or custodian, §23-63-904.
Duration and release.
Generally, §23-63-911.
Life insurance and annuity reserves, §23-63-912.
Excess deposits, §23-63-908.
Life insurance.
Capital deposits may be credited, §23-81-135.
Certificates.
Fee for certificate, §23-81-131.
Reserves, §23-81-130.
Deficiency of deposit, §23-81-136.
Deposit of capital may be credited, §23-81-135.
Liquidation.
Moneys collected, §23-68-121.
Purposes, §23-63-902.
Records, §23-63-905.
Liability of commissioner and state, §23-63-905.
Rehabilitation.
Moneys collected, §23-68-121.
Rights of insurer during solvency, §23-63-907.
Securities eligible for deposit, §23-63-903.
Stipulated premium insurers, §23-71-110.
Guaranty fund deposit, §23-71-110.
Return of deposit, §23-71-110.
Diabetes coverage, §§23-79-601 to 23-79-607.
Direct actions statute, §23-79-210.
Disabilities, individuals with.
Health insurance policies.
Age requirement, §23-85-131.
Disability insurance.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Disclosure of material transactions, §§23-63-1401 to 23-63-1406.

INSURANCE —Cont'd
Discovery.
Unfair competition and trade practices.
Production of books, §23-66-209.
Dispute resolution process.
Use of credit information in personal insurance, §23-67-406.
Dividends.
Annuities, §23-81-126.
Domestic stock and mutual insurers.
Illegal dividends, §23-69-131.
Mutual policyholders, §23-69-130.
Stockholders, §23-69-129.
Industrial life insurance.
Policies, §23-82-109.
Life insurance.
Policy provisions, §23-81-108.
Rates and rating organizations.
Payment, §23-67-204.
Divorce.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.
Drafts.
Prompt processing by insurer, §23-63-107.
Drug abuse.
Care and treatment of alcohol and drug dependency.
Requirements of group policies, contracts and plans, §23-79-139.
Health insurance.
Policy provisions, §23-85-126.
Drunkenness.
Care and treatment of alcohol and drug dependency.
Requirements of group policies, contracts and plans, §23-79-139.
Earthquake insurance.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.
Emergencies.
Risk management.
Procurement of insurance or surety bonding under emergency conditions, §23-61-606.
Employee benefit stop-loss insurance, §23-62-111.
Employers' liability insurance.
Commercial general liability insurance, §23-79-155.
Increase in premiums, §23-79-151.
Rates and charges, §23-67-219.
Estoppel.
Surety insurers.
Denying corporate power to be surety, §23-63-1004.

INSURANCE —Cont'd
Evidence.
Commissioner, §23-61-301.
Policies.
Applications, §23-79-106.
Surplus lines, §23-65-311.
Examinations.
Captive insurance companies, §23-63-1608.
Expenses, §23-61-206.
Farmers' mutual aid associations.
Applicable provisions, §23-73-114.
Holding companies.
Power of commissioner, §23-63-516.
Purposes and limitations upon, §23-63-516.
Risk retention and purchasing groups.
Foreign risk retention groups, §23-94-205.
Exempted organizations and activities, §23-60-104.
Eye care providers.
Health insurance.
Primary eye care providers, §§23-99-301 to 23-99-305.
False or misleading statements.
Penalty.
Generally, §23-60-109.
Fees.
Burial associations, §23-78-111.
Disposition of fees and charges, §23-78-123.
Commissioner.
Disposition of fees, §23-61-402.
Schedule of fees, §23-61-401.
Criminal investigation division trust fund act, §§23-100-104, 23-100-105.
Farmers' mutual aid associations.
Payment of annual fees or charges.
Not required, §23-73-116.
Foreign fees.
Retaliation, §23-63-102.
Illegal dealing in premiums and excess charges.
Exceptions, §23-66-310.
Life insurance.
Certificates, §23-81-131.
Liquidation.
Exemptions, §23-68-122.
Rehabilitation.
Exemption from fees, §23-68-122.
Fiduciaries.
Licensees.
Fiduciary duties, §23-64-223.
Fines.
Fraudulent insurance acts, §23-66-512.

INSURANCE —Cont'd
Fines —Cont'd
Material transactions disclosures, §23-63-1406.
Fire insurance.
Policies.
Valued policy law, §23-88-101.
Foreign decrees.
Enforcement, §23-61-111.
Forms.
Credit life and disability insurance.
Policies.
Filing, approval and withdrawal of forms, §23-87-112.
Health insurance.
Claims, §23-85-111.
Standard claims form required, §23-85-136.
Policy forms, §23-85-104.
Policies.
Approval of forms, §23-79-109.
Grounds for disapproval, §23-79-110.
Noncomplying forms.
Validity, §23-79-118.
Proof of loss forms.
Furnishing, §23-79-126.
Validity of noncomplying forms, §23-79-118.
Use of credit information in personal insurance.
Sample disclosure statement, §23-67-407.
Fossil or synthetic fuel production.
Property and facilities for.
Investment by companies, §23-63-837.
Fraternal benefit societies.
General provisions, §§23-74-101 to 23-74-705.
Freedom of choice.
Health insurance.
Professionals not licensed under Arkansas medical practices act.
Right to treatment by notwithstanding policy provisions, §23-79-114.
Funds.
Companies.
Capital funds required, §23-63-205.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Reciprocal insurers.
Surplus funds.
Required, §23-70-105.
Stipulated premium insurers.
Guaranty fund deposit, §23-71-110.
Garnishment.
Delinquency proceedings.
Assets, §23-68-120.
INSURANCE —Cont'd
General penalty, §23-60-107.
Genetic nondiscrimination in insurance act, §23-66-320.
Guaranty.
Property and casualty insurance guaranty, §§23-90-101 to 23-90-123.
Guaranty association.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Health insurance.
Comprehensive health insurance pool, §§23-79-501 to 23-79-517.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Diabetes coverage, §§23-79-601 to 23-79-607.
Healthcare fraud.
Annual report, §23-61-116.
Health maintenance organizations, §§23-76-101 to 23-76-132.
Marketplace navigators, guides, certified application counselors.
Licenses, §§23-64-601 to 23-64-614.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Health maintenance organizations.
General provisions, §§23-76-101 to 23-76-132.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Hearings.
Burial associations, §§23-78-108, 23-78-124.
Certificates of authority.
Revocation or suspension, §23-63-213.
Commissioner.
Conduct of hearings, §23-61-305.
Generally, §23-61-303.
Notice of hearing, §23-61-304.
Order on hearing, §23-61-306.
Delinquency proceedings, §23-68-118.
Hearing officer instead of commissioner, §23-61-303.
Policies.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Risk-based capital act, §23-63-1308.

INSURANCE —Cont'd
Hearings —Cont'd
Risk-based capital requirements for health organizations, §23-63-1507.
Risk-sharing plans for property and casualty insurance.
Availability of any amount or kind of insurance, §23-95-104.
Unfair competition and trade practices, §23-66-209.
Home service system of distribution.
Actions, §23-66-407.
Auditing systems, §23-66-404.
Citation of act, §23-66-408.
Deceptive practices, §23-66-406.
Definitions, §23-66-402.
General provisions, §§23-66-401 to 23-66-408.
Penalties, §23-66-408.
Practices required, §23-66-404.
Premiums, §23-66-405.
Receipts to payor, §23-66-405.
Private causes of action, §23-66-407.
Rules and regulations, §23-66-403.
Title, §23-66-408.
Violations, §23-66-408.
Hospital and medical service corporations.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Hospitals.
Hospital and medical service corporations, §§23-75-101 to 23-75-122.
Husband and wife.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.
Policies.
Married woman's right to insure husband's life, §23-79-128.
Immunity.
Commissioner.
Examination of insurers, §23-61-208.
Direct action, §23-79-210.
Fraudulent insurance acts prevention, §23-66-506.
Life and health insurance guaranty association, §23-96-108.
Risk-sharing plans for property and casualty insurance.
Commissioner, representatives or any plan, its participants or employees, §23-95-107.

INSURANCE —Cont'd
Immunity —Cont'd
Unfair competition and trade practices.
Persons attending or testifying at hearings, §23-66-214.
Improvement districts.
Investments.
Obligations of improvement districts, §23-63-810.
Income withholding.
Minimum basic benefit policies.
Payroll deduction, §23-98-108.
Indemnification.
Reciprocal insurers, §§23-70-101 to 23-70-124.
Use of credit information for personal insurance.
Holding agents harmless against liability, §23-67-410.
Industrial life insurance, §§23-82-101 to 23-82-118.
Industrial loan institutions.
Loans insured by federal government, §23-36-110.
Injunctions.
Delinquency proceedings, §23-68-105.
Health insurance.
Primary eye care providers.
Remedies for violations, §23-99-305.
Holding companies.
Mutual insurance holding companies, §23-69-321.
Violations of provisions, §23-63-521.
Risk retention and purchasing groups.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Insolvency.
Life and health insurance guaranty association.
Insolvent insurers, §23-96-111.
Authority of association, §23-96-113.
Detection and prevention of impairments, §23-96-117.
Distributions of ownership rights, §23-96-119.
Mutual assessment life and disability insurers, §23-72-121.
Stipulated premium insurers, §23-71-113.
Installment contracts.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

INSURANCE —Cont'd
Insurance department with trust fund.
Administrative and regulatory fees, §23-61-706.
Audit of state warrants, §23-61-710.
Citation of act, §23-61-701.
Commissioner.
Duties, §23-61-709.
Powers, §23-61-709.
Commissioner's waiver for impaired insurers, §23-61-704.
Creation, §23-61-702.
Deposits, §23-61-705.
Expense appropriations, §23-61-702.
Fees.
Additional fees, §23-61-711.
Administrative and financial regulation fees, §23-61-703.
Agents on inactive license status, §23-61-707.
Department products enumerated, §23-61-708.
Department services enumerated, §23-61-708.
Exceptions, §23-61-711.
General provisions, §§23-61-701 to 23-61-711.
Insurance department vouchers, §23-61-710.
Insurers, §23-61-703.
Insurers' payment extensions, §23-61-704.
Insurers' regulation fees, §23-61-705.
Licensees, §23-61-706.
Licenses.
Agents on inactive status.
Fees, §23-61-707.
Penalties for noncompliance, §23-61-704.
Reinsurers, §23-61-703.
Title of act, §23-61-701.
Insurance sales consumer protection act, §§23-66-601 to 23-66-610.
Interstate insurance product regulation compact, §§23-67-601, 23-67-602.
Intervention.
Unfair competition and trade practices.
Judicial review by intervenor, §23-66-213.
Investigations.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Investments.
Burial associations.
Collections, §23-78-122.

INSURANCE —Cont'd
Investments —Cont'd
Insurance companies, §§23-63-801 to 23-63-841.
Judgments.
Foreign decrees.
Enforcement, §23-61-111.
Reciprocal insurers, §23-70-111.
Subscribers' liability on judgment, §23-70-117.
Jurisdiction.
Delinquency proceedings, §23-68-103.
Holding companies.
Control of or merger with domestic insurer.
Jurisdiction of courts, §23-63-512.
Large commercial risks.
Content requirements for policies in general inapplicable, §23-79-112.
Exemption from filing and approval of policy form requirements, §23-79-109.
Renewal by certificate, inapplicability, §23-79-123.
Legal insurance, §§23-91-201 to 23-91-227.
Liabilities.
Assets.
Deductions from liabilities, §23-63-602.
Casualty insurance.
Tort liability.
Retention, §23-89-206.
Civil liability.
Absence of fraud or bad faith, §23-60-111.
Domestic stock and mutual insurers.
Contingent liability of nonlife mutual members, §23-69-124.
Enforcement, §23-69-124.
Stockholders, §23-69-133.
Generally, §23-63-604.
Life insurance.
Limitation, §23-81-115.
Mutual assessment life and disability insurers.
Officers and members not individually liable, §23-72-122.
Property and casualty insurance guaranty.
Insurers, §23-90-120.
Reciprocal insurers.
Aggregate liability, §23-70-119.
Subscribers liability, §23-70-117.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

INSURANCE —Cont'd
Liabilities —Cont'd
Risk-sharing plans for property and casualty insurance.
Immunity.
Commissioner, representative or plan or its participants, §23-95-107.
Rural risk underwriting association.
Liability of participants in plan, §23-88-307.
Stipulated premium insurers, §23-71-111.
Personal liability of officers, directors, stockholders or employees, §23-71-114.
Licenses.
Change of address of licensee.
Notification to commissioner, §23-64-214.
Default by insurance producer, §23-64-232.
Emergency suspension, §23-64-203.
Examinations, §§23-64-202, 23-64-203, 23-64-205.
Fiduciary duties of licensees, §23-64-223.
Health insurance marketplace navigators, guides, certified application counselors, §§23-64-601 to 23-64-614.
Holding companies.
Revocation, suspension or nonrenewal of insurer's license, §23-63-524.
Material transactions disclosures.
Revocation or suspension of insurer's license, §23-63-1406.
Nonresident licensees.
Service of process.
Appointment of commissioner as agent for, §23-64-227.
Probationary status, §23-64-216.
Qualifications, §23-64-202.
Rates and charges.
Advisory organizations, §23-67-214.
Return of license to commissioner, §23-64-218.
Revocation, §23-64-216.
Procedure following, §23-64-217.
Return of license to commissioner, §23-64-218.
Risk-based capital act.
Violation of provisions.
Revocation or suspension of insurer's license, §23-63-1314.
Health organizations, §23-63-1513.

INSURANCE —Cont'd
Licenses —Cont'd
Risk retention and purchasing groups.
Agents or brokers, §§23-94-211, 23-94-213.
Self-service storage insurance, §23-64-233.
Suspension, §23-64-216.
Emergency suspension, §23-64-203.
Procedure following, §23-64-217.
Return of license to commissioner, §23-64-218.
Terminated producers.
Settlement with, §23-64-231.
Title insurance act, §§23-103-401 to 23-103-417.
Life and health insurance guaranty association, §§23-96-101 to 23-96-121.
Life insurance.
Life settlements, §§23-81-801 to 23-81-818.
Life settlements, §§23-81-801 to 23-81-818.
Limited health service organizations.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Limit of risk, §23-63-701.
Loans.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Insurance sales consumer protection act, §§23-66-601 to 23-66-610.
Investments.
Collateral loans, §23-63-822.
Policy loans, §23-63-821.
Savings and loan associations, §23-63-823.
United States loans, §23-63-807.
Life insurance.
Policy loans, §23-81-109.
Indebtedness deducted from proceeds, §23-81-117.
Interest rate, §23-81-109.
Reinstatement provisions, §23-81-111.
Table of installments, §23-81-110.
Local governments.
Direct actions against insurer, §23-79-210.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.
Losses.
Health insurance.
Proof of loss, §23-85-112.

INSURANCE —Cont'd
Mail.
Holding companies.
Control of or merger with domestic insurer.
Mailings generally, §23-63-511.
Major medical benefits coverage.
Individual health insurance policies.
Renewal of policy, exceptions, §23-79-119.
Mandamus.
Holding companies.
Acts or determinations of commissioner, §23-63-519.
Marine insurance.
Defined, §23-62-107.
Material transactions disclosures, §§23-63-1401 to 23-63-1406.
Appeals.
Penalties for violations, §23-63-1406.
Asset acquisition or disposition, §23-63-1403.
Ceded reinsurance agreements.
Nonrenewals, cancellations or revisions, §23-63-1404.
Citation of act.
Short title, §23-63-1401.
Fines for violations, §23-63-1406.
Nonrenewal, cancellation or revision of ceded reinsurance agreements, §23-63-1404.
Penalties for violations, §23-63-1406.
Reports, §23-63-1402.
Revocation of insurer's license, §23-63-1406.
Rules and regulations, §23-63-1405.
Short title, §23-63-1401.
Suspension of insurer's license, §23-63-1406.
Violations of provisions, §23-63-1406.
Medical service corporations, §§23-75-101 to 23-75-122.
Medical transportation services.
Direct reimbursement, §23-79-148.
Meetings.
Domestic stock and mutual insurers.
Stockholders, §23-69-120.
Mental health.
Group and blanket health insurance.
Minimum benefits, §23-86-113.
Health insurance policies.
Age requirement, §23-85-131.
Required coverage, §§23-99-501 to 23-99-512.
Psychological examiner coverage, §23-79-142.
Minimum basic benefit policies, §§23-98-101 to 23-98-111.

INSURANCE —Cont'd
Mortgages and deeds of trust.
Investments, §§23-63-826, 23-63-827.
Motor carriers.
Leased motor vehicles.
Cancellation or termination of insurance policies on.
Notice, §23-13-104.
Uninsured motorist liability insurance.
General provisions, §§23-16-301 to 23-16-304.
Motor vehicles.
Bodily injury minimum coverage limits, §23-89-403.
Extraterritorial provisions.
Liability insurance coverage, §23-89-212.
Commercial lines, §23-79-311.
Proof-of-insurance card.
Issued to insured, §23-89-213.
Stepdowns.
Prohibited, §23-89-214.
Commercial lines, §23-79-312.
Total loss settlements, §23-89-211.
Underinsured motorists, §23-89-209.
Multiple employer trust and self-insured plans.
Bonds, surety.
Amount, §23-92-204.
Cancellation, §23-92-204.
Required, §23-92-204.
Definitions, §23-92-201.
Records.
Access, §23-92-207.
Confidential information, §23-92-207.
Maintenance, §23-92-207.
Registration.
Bonds, surety, §23-92-204.
Certificate of registration.
Application, §23-92-203.
Issuance, §23-92-203.
Renewal, §23-92-203.
Required, §23-92-203.
Suspension or revocation, §23-92-203.
Required, §23-92-101.
Time for registration, §23-92-101.
Third party administrator.
Collections by, §23-92-206.
Compensation, §23-92-208.
Defined, §23-92-201.
Deposits and withdrawals, §23-92-206.
Fiduciary capacity, §23-92-206.
Payment of claims and return of premiums.
Presumptions, §23-92-205.

INSURANCE —Cont'd
Multiple employer trust and self-insured plans —Cont'd
Third party administrator —Cont'd
Payments of premiums to.
Presumptions, §23-92-205.
Updating of lists of trusts and plans, §23-92-203.
Written agreement required, §23-92-202.
Municipal corporations.
Direct action against insurer, §23-79-210.
Mutual aid associations.
Farmers' mutual aid associations, §§23-73-101 to 23-73-123.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Mutual insurance holding companies, §§23-69-301 to 23-69-323.
Mutual insurers.
Domestic stock and mutual insurers, §§23-69-101 to 23-69-156.
Names.
Captive insurance companies.
Deceptively similar names, §23-63-1603.
Companies.
Foreign state or country.
Unjustified refusal to permit business because of similar name.
Retaliation, §23-63-103.
Name of insurer, §23-63-203.
Insurance producers.
Assumed names, §23-64-510.
Reciprocal insurers.
Actions.
Name used in suits, §23-70-104.
Stipulated premium insurers.
Use of name, §23-71-106.
Unfair competition and trade practices.
Fictitious groups, §23-66-304.
Natural causes.
Cancellation or denial of renewal of policy.
Prohibited grounds, §23-63-109.
Negative risk rating when insured not at fault, §23-79-152.
Newborn infants.
Coverage included in all policies covering insured's family, §23-79-129.
Certain coverage required for approval by commissioner, §23-79-129.
INSURANCE —Cont'd
Newborn infants —Cont'd
Coverage included in all policies covering insured's family —Cont'd
Minimum basic benefit policies, §23-98-106.
No-fault insurance.
First party coverage.
Required coverage, §23-89-202.
Nonforfeiture provisions.
Annuities.
Individual deferred annuities, §§23-81-301 to 23-81-313.
Life insurance, §§23-81-201 to 23-81-213.
Nonpayment of claims.
Penalty for failure to pay promptly, §23-63-107.
Nonprofit corporations.
Direct actions against insurer, §23-79-210.
Notice.
Cancellation of policies.
Notice of intention to cancel, §23-66-319.
Casualty insurance.
Cancellation of policies, §§23-89-304, 23-89-306.
Nonrenewal of policies, §§23-89-305, 23-89-306.
Certificates of authority.
Revocation or suspension, §23-63-214.
Commissioner.
Entering orders and notices, §23-61-109.
Hearings, §23-61-304.
Delinquency proceedings.
Assessments, §23-68-132.
Claims, §23-68-118.
Health insurance.
Claims, notice of, §23-85-110.
Holding companies.
Control of or merger with domestic insurer.
Hearing, §23-63-510.
Mailing, §23-63-511.
Insurance producers.
Termination.
Notice to commissioner, §23-64-515.
Malpractice insurance.
Rate increases, §23-67-506.
Minimum basic benefit policies, §23-98-108.

INSURANCE —Cont'd
Notice —Cont'd
Mutual assessment life and disability insurers.
Claims.
Members to be notified if claims scaled, §23-72-115.
Policies.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Premiums.
Commercial property and casualty insurance policies.
Increase of premiums, §23-79-307.
Liability policies.
Increase, §23-79-151.
Property and casualty insurance guaranty.
Claims.
Insureds to be notified, §23-90-111.
Property insurance.
Rates and charges.
Notice of increase, §23-67-211.
Reinsurance, §23-62-205.
Risk retention and purchasing groups.
Foreign risk retention groups.
Notice to purchasers, §23-94-205.
Purchasing groups.
Requirements, §23-94-208.
Use of credit information in personal insurance.
Adverse agency notification, §23-67-408.
Sample disclosure statement, §23-67-407.
Oaths.
Burial associations.
Board.
Oath of office, §23-78-105.
Fees.
Oath at payment, §23-78-111.
Commissioner, §23-61-102.
Offsets.
Rehabilitation, §23-68-127.
Particular provisions prevail, §23-60-105.
Payment of claims.
Prompt processing by insurer, §23-63-107.
Penalties.
Acquisitions involving insurers not otherwise covered.
Orders and penalties, §23-63-529.
INSURANCE —Cont'd
Penalties —Cont'd
Amusement ride and amusement attraction safety insurance.
Operation without safety inspection and insurance, §23-89-504.
Claims not paid promptly, §23-63-107.
Credit life and disability insurance.
Violations, §23-87-106.
Domestic stock and mutual insurers.
Illegal dividends, §23-69-131.
Proxies.
Corrupt practices, §23-69-123.
Records.
Unlawful removal, §23-69-134.
False or misleading statements, §23-60-109.
Fraudulent insurance acts, §23-66-512.
General penalty, §23-60-108.
Material transactions disclosures, §23-63-1406.
Policies.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Rates and rating organizations.
Violations, §23-67-205.
Risk retention and purchasing groups.
Foreign risk retention groups, §23-94-205.
Unfair competition and trade practices.
False representations, §23-66-302.
Violation of cease and desist orders, §23-66-211.
Personal property.
Domestic stock and mutual insurers.
Taxation.
Situs of personal property for taxation, §23-69-136.
Petitions.
Delinquency proceedings.
Report and petition for assessment, §23-68-130.
Powers of attorney.
Reciprocal insurers, §23-70-108.
Prepaid legal insurance, §§23-91-201 to 23-91-227.
Prescription drug benefits, §23-79-149.
Uniformity of prescription drug cards, §§23-80-401 to 23-80-409.
Prescription medication for treatment of cancer, §23-79-147.
Privacy.
Consumer protection.
Customer privacy, §23-66-607.

INSURANCE —Cont'd
Privilege taxes.
Risk retention groups, §23-94-210.
Producers.
Licenses, §§23-64-501 to 23-64-520.
Products liability.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Professional employer organizations, §§23-92-401 to 23-92-419.
Property insurance.
Actuarial opinion law, §§23-63-1901 to 23-63-1905.
Commercial property and casualty insurance policies.
Minimum standards, §§23-79-301 to 23-79-312.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
General provisions, §§23-63-1101 to 23-63-1107.
Protected cell company act, §§23-63-1701 to 23-63-1709.
Purchasing groups.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Railroads.
Casualty insurance.
Railroad accidents not to be considered in automobile insurance, §23-89-302.
Liability for injury or death of employee.
Contracts of indemnity insurance no defense, §23-12-507.
Safe transportation of railroad employees by contract carriers.
Liability insurance requirement, §23-16-509.
Special passenger excursion trains, §23-10-213.
Reciprocal insurers, §§23-70-101 to 23-70-124.
Reciprocity.
Health insurance, §23-85-129.
Insurance producers.
Licensing, §23-64-516.
Records.
Agents and brokers.
Keeping of records, §23-64-220.
Brokers.
Surplus lines, §23-65-313.
Burial associations.
Books and records.
Maintenance, §§23-78-117, 23-78-119.

INSURANCE —Cont'd
Records —Cont'd
Commissioner.
Certified copies and certificates, §23-61-107.
Examinations, §23-61-204.
Keeping, §23-61-107.
Deposits, §23-63-905.
Liability of commissioner and state, §23-63-905.
Domestic stock and mutual insurers.
Keeping of records required, §23-69-134.
Holding companies.
Confidential treatment, §23-63-517.
Life and health insurance guaranty association.
Open records, §23-96-109.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Rates and charges.
Filing, §23-67-218.
Malpractice insurance rates, §23-67-504.
Signatures.
Electronic, electronic facsimile-transmitted or computer-readable signatures, §23-61-107.
Small employer health insurance.
Maintenance of records, §23-86-207.
Surplus lines.
Brokers to keep records, §23-65-313.
Production on order, §23-65-104.
Reports.
Brokers.
Surplus lines, §23-65-314.
Burial associations.
Semiannual reports, §23-78-120.
Captive insurance companies, §23-63-1607.
Commissioner.
Annual report, §23-61-112.
Health insurance fraud, §23-61-116.
Examinations, §23-61-205.
Companies.
Annual statement and other information, §23-63-216.
Credit life and disability insurance.
Claims, §23-87-115.
Delinquency proceedings.
Petition and report for assessment, §23-68-130.
Fraudulent insurance acts, §§23-66-505 to 23-66-507.

INSURANCE —Cont'd
Reports —Cont'd
Insurance producers.
Reports to commissioner, §23-64-517.
Legal insurance.
Annual report, §23-91-215.
Exempt persons, §23-91-206.
Public documents, §23-91-227.
Life and health insurance guaranty association.
Board of directors.
Annual report, §23-96-109.
Material transactions disclosures, §23-63-1402.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Property and casualty insurance guaranty.
Advisory association, §23-90-109.
Rates and charges.
Malpractice insurance rates, §23-67-504.
Rates and rating organizations.
Loss and expense experience, §23-67-215.
Reciprocal insurers.
Annual statement, §23-70-113.
Risk management.
Annual reports, §23-61-610.
Information reported to manager, §23-61-609.
Surplus lines.
Independently procured coverages, §23-65-103.
Use of credit information for personal insurance.
Annual reporting, §23-67-415.
Reserves.
Life insurance.
Deposit of reserves, §23-81-130.
Capital deposits may be credited, §23-81-135.
Deficiency of deposit, §23-81-136.
Maintenance of deposits, §23-81-134.
Mutual assessment life and disability insurers.
Required, §23-72-104.
Stipulated premium insurers.
Required, §23-71-105.
Title insurance, §23-63-614.
Resident agents.
Defined, §23-64-102.
Residential earthquake insurance.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.
INSURANCE —Cont'd
Restitution.
Fraudulent insurance acts, §23-66-512.
Rights of policyholders, §23-61-115.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Rules and regulations.
Burial associations, §23-78-121.
Captive insurance companies, §23-63-1615.
Commissioner.
Captive insurance companies, §23-63-1615.
Disclosure of nonpublic personal information, §23-61-113.
Financial reporting, §23-63-613.
Insurance producer licensing, §23-64-518.
Promulgation, §23-61-108.
Protected cell companies, §23-63-1709.
Consumer protection, §23-66-608.
Creditor-placed insurance, §23-101-114.
Criminal investigation division trust fund, §23-100-106.
Domestic stock and mutual insurers.
Equity securities.
Promulgation of rules, §23-69-208.
Fraudulent insurance acts, §23-66-511.
Holding companies.
Mutual insurance holding companies, §23-69-322.
Promulgation of rules by commissioner, §23-63-518.
Insurance producer licensing, §23-64-518.
Life insurance.
Valuation law for life insurance annuities, §23-84-113.
Managing general agents, §23-64-408.
Material transactions disclosures, §23-63-1405.
Minimum basic benefit policies.
Notices and hearing before adoption, §23-98-103.
Policies.
Commercial property and casualty insurance policies.
Promulgation, §23-79-310.
Prohibited activities, §23-66-609.
Property and casualty insurance guaranty.
Promulgation of rules by commissioner, §23-90-122.
Protected cell companies, §23-63-1709.
Reinsurance, §23-62-308.

INSURANCE —Cont'd
Rules and regulations —Cont'd
Risk management.
Manager to promulgate rules and regulations, §23-61-607.
Risk retention and purchasing groups.
Commissioner, §23-94-215.
Risk-sharing plans for property and casualty insurance.
Commissioner to promulgate, §23-95-108.
Rural risk underwriting association.
Commissioner's rules and regulations, §23-88-308.
Unfair competition and trade practices.
Promulgation of rules to identify prohibited methods of competition, §23-66-207.
Use of credit information for personal insurance, §23-67-414.
Workers' compensation.
Mandatory insurance plans, §23-67-310.
Appeals of orders or rulings, §23-67-309.
Rural telecommunications cooperatives.
Directors, officers, employees or agents.
Purchasing on behalf of, §23-17-238.
Savings and loan associations.
Accounts, §23-37-308.
Investments, §23-63-823.
Seals.
Commissioner, §23-61-102.
Secure transactions.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Securities.
Holding companies.
Voting of securities, §23-63-520.
Self-service storage insurance.
Limited license, §23-64-233.
Service of process.
Foreign or alien insurers and domestic reciprocal insurers, §23-63-304.
Group annuities and group life insurance.
Unauthorized insurers, §23-83-124.
Holding companies.
Control of or merger with domestic insurer, §23-63-512.
Mutual assessment life and disability insurers.
Actions, §23-72-120.
Nonresident licensees.
Appointment of commissioner as agent for service, §23-64-227.

INSURANCE —Cont'd
Service of process —Cont'd
Policies.
Suits against insurers, §23-79-205.
Reciprocal insurers, §23-70-111.
Risk retention and purchasing groups.
Foreign risk retention groups.
Designation of commissioner as agent, §23-94-205.
Purchasing groups.
Designation of commissioner as agent, §23-94-208.
Suits against insurers, §23-79-205.
Surplus lines.
Actions against insurer, §23-65-318.
Unauthorized insurers.
Commissioner agent for service, §23-65-202.
Exemptions from service of process provisions, §23-65-204.
Procedure for service, §23-65-203.
Unfair competition and trade practices.
Hearings, §23-66-209.
Settlements.
Life settlements, §§23-81-801 to 23-81-818.
Structured settlements, §§23-81-701 to 23-81-707.
Short title, §23-60-101.
Sickness insurance.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Solvency.
Mutual assessment life and disability insurers, §23-72-121.
Stipulated premium insurers, §23-71-113.
Sovereign immunity.
Direct action against insurers, §23-79-210.
State of Arkansas.
Direct actions against insurer, §23-79-210.
State purchasing director.
Risk management.
Limitation on jurisdiction, §23-61-606.
Structured settlement protection, §§23-81-701 to 23-81-707.
Subrogation.
Casualty insurance.
Injured person subrogated to right of insured, §23-89-101.

INSURANCE —Cont'd
Subrogation —Cont'd
Casualty insurance —Cont'd
Insurer making payment, §23-89-405.
Life and health insurance guaranty association.
Subrogation rights, §23-96-114.
Underinsured motorists, §23-89-209.
Subrogation recovery, §23-79-146.
Subscribers.
Reciprocal insurers.
Advisory committee, §23-70-116.
Liability, §23-70-117.
Who may be subscribers, §23-70-115.
Subsidiaries.
Holding companies, §23-63-505.
Investments.
Subsidiary stocks, §23-63-818.
Surety insurance.
Defined, §23-62-106.
Surpluses.
Domestic stock and mutual insurers.
Borrowed surplus, §23-69-132.
Surviving spouse.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.
Taxation.
Brokers.
Surplus lines, §23-65-315.
Domestic stock and mutual insurers.
Personal property.
Situs for taxation, §23-69-136.
Foreign taxes.
Retaliation, §23-63-102.
Legal insurance.
Premiums, §23-91-226.
Life and health insurance guaranty association.
Exemption, §23-96-109.
Property and casualty insurance guaranty.
Assessment as credit against taxes, §23-90-119.
Risk retention groups, §23-94-210.
Surplus lines, §23-65-315.
Independently procured coverages, §23-65-103.
Test tube babies.
Group and blanket health insurance.
Coverage required, §23-86-118.
Theft.
Diversion or appropriation of funds by licensees, §23-64-223.
Third parties.
Health insurance.
Ownership of policies, §23-85-103.
INSURANCE —Cont'd
Title insurance, §§23-103-401 to 23-103-417.
Title of act, §23-60-101.
Torts.
Casualty insurance.
Retention of tort liability, §23-89-206.
Insured not subject to suit for tort.
Suits against insurers, §23-79-210.
Trade practices.
Unfair competition and trade practices, §§23-66-201 to 23-66-316.
Travel insurance, §23-64-202.
Trusts and trustees.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Investments.
Equipment trust certificates, §23-63-819.
Investment trust securities, §23-63-820.
Minimum basic benefit policies.
Qualified trust, §23-98-104.
Defined, §23-98-102.
Formation, §23-98-104.
Underwriters.
Policies, §23-79-117.
Rural risk underwriting association, §§23-88-301 to 23-88-309.
Valued policy law.
Property insurance, total loss by fire or natural disaster, §23-88-101.
Vending machines, §23-64-221.
Venue.
Delinquency proceedings, §23-68-103.
Mutual assessment life and disability insurers.
Actions, §23-72-120.
Policies.
Suits against insurers, §23-79-204.
Suits against insurers, §23-79-204.
Waiver.
Policies.
Claims administration not waiver, §23-79-127.
Witnesses.
Burial associations.
Hearings, §23-78-108.
Commissioner, §23-61-301.
Testimony compelled, §23-61-302.
Unfair competition and trade practices.
Hearings, §23-66-209.

INSURANCE ADJUSTERS.
Defined, §23-64-102.

INSURANCE ADJUSTERS —Cont'd
Licenses.
Contents, §23-64-214.
Continuance of license, §23-64-215.
Issuance, §23-64-214.
Partnerships, limited partnerships, joint ventures, limited liability companies, and corporations, §23-64-210.
Qualifications, §23-64-209.
Required, §23-64-201.
Scope of chapter, §23-64-101.

INSURANCE COMPANIES.
Acquisitions involving insurers not otherwise covered.
Applicability of provisions, §23-63-526.
Inapplicable provisions, §23-63-530.
Competitive standard, §23-63-528.
Definitions, §23-63-525.
Orders and penalties, §23-63-529.
Preacquisition notification, §23-63-527.
Waiting period, §23-63-527.
Administrative functions of domestic insurers, §23-63-105.
Alien insurers.
Defined, §23-60-102.
Domicile, §23-63-104.
Approval as a domestic insurer, §23-63-218.
Captive insurance companies, §§23-63-1601 to 23-63-1623.
Certificates of authority.
Admitted assets, investment, §23-63-201.
Amendments, §23-63-211.
Annual statement and other information, §23-63-216.
Applications, §23-63-209.
Approval as a domestic insurer, §23-63-218.
Authorization for investment purposes only, §23-63-201.
Capital funds required, §23-63-205.
Captive insurance companies, §23-63-1623.
Charitable annuity permit, §23-63-201.
Combinations of insuring powers.
One insurer, §23-63-204.
Continuance of authority, §23-63-211.
Deposit requirements, §23-63-206.
Eligibility, §23-63-202.
Exemption for certificate requirement, §23-63-201.
Expiration of authority, §23-63-211.
General eligibility of insurers for certificate of authority, §23-63-202.

INSURANCE COMPANIES —Cont'd
Certificates of authority —Cont'd
Issuance of authority, §23-63-210.
Lloyd's plan insurers, §23-63-208.
Mandatory revocation or suspension, §23-63-212.
Market conduct annual statement, §23-63-216.
Name of insurer.
Requirements, §23-63-203.
Notice.
Insurer's obligations during suspension period, §23-63-215.
Revocation or suspension of certificate, §23-63-214.
Ownership of certificate, §23-63-210.
Penalties for noncompliance, §23-63-201.
Qualifications.
Capital funds required, §23-63-205.
Deposit requirements, §23-63-206.
Special surplus requirement, §23-63-207.
Refusal of authority, §23-63-210.
Reinstatement, §23-63-215.
Reports.
Annual statement and other information, §23-63-216.
Required, §23-63-201.
Revocation or suspension.
Duties during suspension, §23-63-215.
Grounds, §23-63-213.
Hearings, §23-63-213.
Mandatory revocation or suspension, §23-63-212.
Notice, §23-63-214.
Period of suspension, §23-63-215.
Reinstatement, §§23-63-211, 23-63-215.
Special surplus requirement, §23-63-207.
Surrender, §23-63-211.
Common ownership, management and directors of insurance companies, §23-66-314.
Consumer credit information, use in personal insurance, §§23-67-401 to 23-67-415.
Contracts.
Service contracts, §23-63-105.
Conversion to foreign insurer, §23-63-218.
Dental plans.
Fees for noncovered services.
Agreement between insurers and dentists, §23-63-115.

INSURANCE COMPANIES —Cont'd
Domestic insurance companies.
Impairment of capital, §23-69-138.
Liquidation.
Claims of nonresidents, §23-68-116.
Conduct of delinquency proceedings against, §23-68-113.
Funds.
Deposit and use of funds, §23-68-114.
Source, §23-68-114.
Order of liquidation, §23-68-111.
Registered office and agent, §§23-63-301 to 23-63-304.
Rehabilitation.
Claims of nonresidents against, §23-68-116.
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Effects of redomestication, §23-63-218.
Farm credit act of 1971.
Bond issues.
Authorized investments, §23-32-201.
Farmers' mutual aid associations, §§23-73-101 to 23-73-123.
Foreign insurance companies.
Conservation.
Grounds for conservation, §23-68-108.
Conversion to foreign insurer, §23-63-218.
Definition of "foreign insurer," §23-60-102.
Effects of redomestication, §23-63-218.
Investments, §23-63-835.
Liquidation.
Ancillary liquidation.
Grounds, §23-68-109.
Order, §23-68-112.
Claims against foreign insurers, §23-68-117.
Conduct of delinquency proceedings against, §23-68-113.
Funds.
Deposit and use, §23-68-114.
Order of liquidation, §23-68-111.
Lloyd's plan insurers, §23-63-208.
Redomestication.
Effects, §23-63-218.
Registered office and agent, §§23-63-301 to 23-63-304.
Rehabilitation.
Claims against, §23-68-117.

INSURANCE COMPANIES —Cont'd
Foreign insurance companies —Cont'd
Rehabilitation —Cont'd
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Risk-based capital act, §23-63-1311.
Health maintenance organizations.
General provisions, §§23-76-101 to 23-76-132.
Risk-based capital requirements for health organizations, §§23-63-1501 to 23-63-1513.
Holding companies.
Generally, §§23-63-501 to 23-63-524.
Mutual insurance holding companies, §§23-69-301 to 23-69-323.
Hospital and medical service corporations, §§23-75-101 to 23-75-122.
Investments.
Applicability of chapter, §23-63-801.
Authorization of investment, §23-63-804.
Banks.
International banks, §23-63-813.
Cancellation of treasury stock.
Certificate of cancellation, §23-63-834.
Captive insurance companies, §23-63-1610.
Certificates of deposit, §23-63-836.
Chattel mortgages, §23-63-827.
Collateralized mortgage obligations, §23-63-840.
Collateral loans, §23-63-822.
Common stocks, §23-63-816.
Corporate bonds and debentures, §23-63-814.
Derivative transactions, §23-63-841.
Diversification of investments, §23-63-805.
Eligible investments, §23-63-802.
Equipment trust certificates, §23-63-819.
Failure to dispose of real estate, property or securities, §23-63-831.
Foreign insurers, §23-63-835.
Foreign securities, §23-63-824.
Fossil or synthetic fuel production.
Property and facilities for, §23-63-837.
General investment authority, §23-63-825.
General qualifications, §23-63-803.

INSURANCE COMPANIES —Cont'd
Investments —Cont'd
Improvement district obligations, §23-63-810.
Insurance stocks, §23-63-817.
International banks, §23-63-813.
Investment trust securities, §23-63-820.
Loans guaranteed by the United States, §23-63-807.
Local industrial development bonds, §23-63-811.
Miscellaneous investments, §23-63-825.
Municipal or county utilities, §23-63-809.
Negotiable bills of exchange, §23-63-839.
Obligations or stock of certain federal agencies, §23-63-812.
Policy loans, §23-63-821.
Preferred or guaranteed stock, §23-63-815.
Prohibited investments, §23-63-833.
Public obligations, §23-63-808.
Qualifications.
Eligible investments, §23-63-802.
General qualifications, §23-63-803.
Real estate, §23-63-828.
Failure to dispose of real estate, §23-63-831.
Time limit for disposal, §23-63-829.
Real estate mortgages, §23-63-826.
Savings and loan associations, §23-63-823.
Scope of chapter, §23-63-801.
Special investments by title insurer, §23-63-832.
Stocks of subsidiaries, §23-63-818.
Time drafts, §23-63-839.
Time limit for disposal of property and securities, §§23-63-829, 23-63-830.
Transactions involving derivative instruments, §23-63-841.
Treasury stock.
Cancellation, §23-63-834.
United States government obligations, §23-63-806.
Utilities, §23-63-809.
Liquidation.
Ancillary liquidation.
Grounds.
Foreign insurers, §23-68-109.
Appeals, §23-68-103.
Assessments.
Notice, §23-68-132.
Order and levy of assessment, §23-68-131.

INSURANCE COMPANIES —Cont'd
Liquidation —Cont'd
Assessments —Cont'd
Prima facie correct, §23-68-132.
Proceedings to collect, §23-68-132.
Report and petition for assessment, §23-68-130.
Assets.
Borrowing on pledge, §23-68-123.
Attachment of assets, §23-68-120.
Borrowing on pledge of assets, §23-68-123.
Claims.
Allowance of certain claims, §23-68-128.
Foreign insurance companies, §23-68-117.
Form, §23-68-118.
Hearings, §23-68-118.
Nonresidents' claims against domestic insurers, §23-68-116.
Notice, §23-68-118.
Priority of certain claims, §§23-68-119, 23-68-126.
Legislative intent, §23-68-134.
Time to file, §23-68-129.
Commencement of delinquency proceedings, §23-68-104.
Companies.
Order of liquidation, §23-68-111.
Conduct of delinquency proceedings against domestic and alien insurers, §23-68-113.
Date rights fixed on liquidation, §23-68-124.
Definitions, §23-68-102.
Deposits.
Money collected, §23-68-121.
Distributable assets.
Defined, §23-68-135.
Early payment to guaranty association, §23-68-135.
Domestic insurance companies.
Claims of nonresidents, §23-68-116.
Conduct of delinquency proceedings against, §23-68-113.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Mutual member's share of assets on liquidation, §23-69-155.
Order of liquidation, §23-68-111.
Early payment of distributable assets to guaranty association, §23-68-135.
Exemption from fees, §23-68-122.
Fees.
Exemptions, §23-68-122.

INSURANCE COMPANIES —Cont'd
Liquidation —Cont'd
Foreign insurance companies.
Ancillary liquidation.
Grounds, §23-68-109.
Order, §23-68-112.
Claims against foreign insurers, §23-68-117.
Conduct of delinquency proceedings against, §23-68-115.
Order of liquidation, §23-68-111.
Funds.
Deposit and use, §23-68-114.
Garnishment of assets, §23-68-120.
Grounds for liquidation, §23-68-107.
Injunctions, §23-68-105.
Jurisdiction of delinquency proceedings, §23-68-103.
Notice.
Assessments, §23-68-132.
Claims, §23-68-118.
Offsets, §23-68-127.
Order of liquidation, §23-68-111.
Alien insurers, §23-68-111.
Ancillary liquidation, §23-68-112.
Protected cell companies, §23-63-1707.
Reinsurer's liability, §23-68-133.
Remedies.
Exclusiveness, §23-68-103.
Reports.
Assessments, §23-68-130.
Transfers.
Voidable transfers, §23-68-125.
Uniform insurers liquidation act, §23-68-101.
Venue of delinquency proceedings, §23-68-103.
Change of venue, §23-68-103.
Voidable transfers, §23-68-125.
Loans.
Servicemen's Readjustment Act, §23-32-205.
Medical service corporations, §§23-75-101 to 23-75-122.
Mergers.
Acquisitions involving insurers not otherwise covered.
Applicability of provisions, §23-63-525.
Inapplicable provisions, §23-63-530.
Competitive standard, §23-63-528.
Definitions, §23-63-525.
Orders and penalties, §23-63-529.
Preacquisition notification, §23-63-527.
Waiting period, §23-63-527.

INSURANCE COMPANIES —Cont'd
Mergers —Cont'd
Captive insurance companies, §23-63-1619.
Domestic stock and mutual insurers.
Acquiring corporations under a plan of exchange, §23-69-147.
Effect, §23-69-145.
Exchange of stock of stock insurers, §23-69-142.
Effect of exchange under plan, §23-69-146.
Mutual insurers, §23-69-143.
Nonconsenting stockholders, §23-69-148.
Plan of exchange of shares agreement, §23-69-144.
Holding companies.
Control of or merger with domestic insurer, §§23-63-506 to 23-63-513.
Approval by commissioner, §23-63-510.
Exceptions, §23-63-507.
Filing requirements, §23-63-506.
Alternative filing materials, §23-63-509.
Content of statement, §23-63-508.
Jurisdiction, §23-63-512.
Mailings, §23-63-511.
Service of process, §23-63-512.
Violations, §23-63-513.
Mutual insurance holding companies, §23-69-313.
Mutual assessment life and disability insurers.
Bulk reinsurance or merger or conversion, §23-72-119.
Reciprocal insurers, §23-70-123.
Stipulated premium insurers, §23-71-115.
Mortgage loans.
Sale of certain mortgage loans, §23-32-204.
Mutual insurance holding companies, §§23-69-301 to 23-69-323.
Names.
Captive insurance companies.
Deceptively similar names, §23-63-1603.
Foreign state or country.
Unjustified refusal to permit business because of similar name.
Retaliation, §23-63-103.

INSURANCE COMPANIES —Cont'd
Policies.
Information about company to be contained on policy, §23-79-138.
Protected cells, §§23-63-1701 to 23-63-1709.
Assets.
Availability to creditors and other claimants, §23-63-1706.
Use, §23-63-1705.
Citation of act, §23-63-1701.
Conservation of protected cell companies, §23-63-1707.
Definitions, §23-63-1703.
Establishment, §23-63-1704.
Liquidation of protected cell companies, §23-63-1707.
Operation, §23-63-1705.
Plan of operation, §23-63-1704.
Purpose of act, §23-63-1702.
Rehabilitation of protected cell companies, §23-63-1707.
Rules and regulations, §23-63-1709.
Securitizations not deemed transaction of insurance business, §23-63-1708.
Title of act, §23-63-1701.
Redomestication.
Effects, §23-63-218.
Registered office and agent.
Foreign or alien insurers and domestic reciprocal insurers, §§23-63-301 to 23-63-304.
Change of office or agent, §23-63-302.
Designation, §23-63-301.
Resignation of agent, §23-63-303.
Service of process, §23-63-304.
Rehabilitation.
Appeals, §23-68-103.
Assessments.
Notice, §23-68-132.
Order and levy, §23-68-131.
Payment, §23-68-132.
Prima facie correct, §23-68-132.
Proceedings to collect, §23-68-132.
Report and petition, §23-68-130.
Assets.
Attachment and garnishment, §23-68-120.
Borrowing on pledge of assets, §23-68-123.
Attachment of assets, §23-68-120.
Claims.
Allowance of certain claims, §23-68-128.
Foreign insurance companies, §23-68-117.

INSURANCE COMPANIES —Cont'd
Rehabilitation —Cont'd
Claims —Cont'd
Form, §23-68-118.
Hearings, §23-68-118.
Nonresident's claims against domestic insurers, §23-68-116.
Notice, §23-68-118.
Priority of certain claims, §23-68-119.
Priority of claims for compensation, §23-68-126.
Legislative intent, §23-68-134.
Time to file, §23-68-129.
Claims of nonresidents against domestic insurers, §23-68-116.
Commencement of delinquency proceedings, §23-68-104.
Companies.
Claims of nonresidents against domestic insurers, §23-68-116.
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Conduct of delinquency proceedings against domestic and alien insurers, §§23-68-113, 23-68-115.
Definitions, §23-68-102.
Deposits.
Moneys collected, §23-68-121.
Domestic insurance companies.
Claims of nonresidents against, §23-68-116.
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Exemption from fees, §23-68-122.
Fees.
Exemption from fees, §23-68-122.
Foreign insurance companies.
Claims against, §23-68-117.
Conduct of delinquency proceedings against, §§23-68-113, 23-68-115.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Funds.
Deposit and use, §23-68-114.
Source, §23-68-114.
Garnishment of assets, §23-68-120.
Grounds for rehabilitation.
Domestic insurers, §23-68-106.

INSURANCE COMPANIES —Cont'd
Rehabilitation —Cont'd
Injunctions, §23-68-105.
Jurisdiction of delinquency proceedings, §23-68-103.
Notice.
Assessments, §23-68-132.
Claims, §23-68-118.
Offsets, §23-68-127.
Order of rehabilitation, §23-68-110.
Termination, §23-68-110.
Protected cell companies, §23-63-1707.
Reinsurer's liability, §23-68-133.
Remedies.
Exclusiveness, §23-68-103.
Reports.
Assessments, §23-68-130.
Time to file claims, §23-68-129.
Transfers.
Voidable transfers, §23-68-125.
Venue of delinquency proceedings, §23-68-103.
Change of venue, §23-68-103.
Voidable transfers, §23-68-125.
Retaliation.
Foreign taxes, fees, restrictions, etc., §23-63-102.
Rules and regulations.
Promulgation, §23-63-218.
Rural risk underwriting association.
Insurer, §23-88-302.
Servicemen's Readjustment Act.
Loans, §23-32-205.
Stock and stockholders.
Companies.
Special surplus requirement, §23-63-207.
Deposits.
Assignment or conveyance of securities or assets, §23-63-907.
Securities eligible for deposit, §23-63-903.
Impairment of capital, §23-69-138.
Investments.
Cancellation of treasury stock, §23-63-834.
Common stocks, §23-63-816.
Foreign securities, §23-63-824.
Insurance stocks, §23-63-817.
Obligations or stock of certain federal agencies, §23-63-812.
Preferred or guaranteed stock, §23-63-815.
Subsidiaries stocks, §23-63-818.
Trust securities, §23-63-820.
Reciprocal insurers.
Subscribers' share in assets, §23-70-122.

INSURANCE COMPANIES —Cont'd
Stock and stockholders —Cont'd
Special surplus requirement, §23-63-207.
Stipulated premium insurers.
Capital stock, §23-71-107.
Title insurance, §§23-103-401 to 23-103-417.
Unauthorized insurers.
Actions.
Defense of action by unauthorized insurer, §23-65-205.
Suits by unauthorized insurers prohibited, §23-65-102.
Aiding prohibited, §23-65-101.
Attorney's fees.
Actions against unauthorized insurers, §23-65-205.
Damages, §23-65-205.
Defenses.
Actions against unauthorized insurer, §23-65-205.
Interpretation of subchapter, §23-65-201.
Representing prohibited, §23-65-101.
Service of process.
Commissioner agent for service, §23-65-202.
Exemptions from provisions, §23-65-204.
Procedure, §23-65-203.
Suits by unauthorized insurers prohibited, §23-65-102.
Title of subchapter, §23-65-201.
Unfair competition and trade practices.
Advertising.
Prior approval required, §23-66-316.
Penalties for advertising without prior approval, §23-66-316.
Agents.
Favored agent or insurer.
Coercion of debtors, §23-66-312.
Appearances, §23-66-209.
Applicability of prohibitions, §23-66-315.
Business development compensation to life policyholders.
Prohibited, §23-66-311.
Cancellation of policies.
Notice of intention to cancel, §23-66-319.
Unlawful actions of agent, §23-66-307.
Cease and desist orders, §23-66-210.
Judicial review, §23-66-212.
Penalty for violation, §23-66-211.

INSURANCE COMPANIES —Cont'd
Unfair competition and trade practices —Cont'd
Certain practices prohibited, §23-66-205.
Claims.
False claims or proofs, §23-66-301.
Claims or loss histories, §23-66-318.
Claims payment.
Methods, §23-66-321.
Coercion of business.
Prohibited, §23-66-303.
Coercion of debtors, §23-66-312.
Commissioner.
Powers, §23-66-208.
Common ownership, management and directors of insurance companies, §23-66-314.
Confidentiality of information.
Disclosure prohibited without consent, §23-66-315.
Consumer sales protection act, §§23-66-601 to 23-66-610.
Contracts.
Overwriting contracts of life insurer, §23-66-313.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Declaration of purpose, §23-66-202.
Definitions, §23-66-203.
Unfair methods of competition, §23-66-206.
Existing law.
Provisions of act additional, §23-66-204.
False representations.
Penalty, §23-66-302.
Fees.
Excess charges for insurance, §23-66-310.
Fictitious groups, §23-66-304.
Fraternal benefit societies.
Unfair methods of competition and unfair and deceptive acts and practices, §23-74-610.
Fraudulent insurance acts, §§23-66-501 to 23-66-513.
Genetic nondiscrimination in insurance act, §23-66-320.
Hearings, §23-66-209.
Immunity of persons attending or testifying from prosecutions, §23-66-214.
Intervenors.
Judicial review, §23-66-213.
Judicial review by intervenors, §23-66-213.

INSURANCE COMPANIES —Cont'd
Unfair competition and trade practices —Cont'd
Judicial review of cease and desist orders, §23-66-212.
Late payment of claims by health carriers.
Penalty, §23-66-215.
Legislative declaration, §23-66-202.
Life insurance.
Requirements when agent seeks to change or replace existing policy, §23-66-307.
Misrepresentation of other policies, §23-66-306.
Misrepresentations in application for insurance, §23-66-305.
Names.
Fictitious groups, §23-66-304.
Other policies.
Misrepresentation, §23-66-306.
Payment of claims.
Methods, §23-66-321.
Penalties.
Generally, §23-66-315.
Penalty orders, §23-66-210.
Policies.
Actions required to change or replace existing policy, §23-66-307.
Charge for substitution of policy.
Prohibited, §23-66-309.
Premiums.
Illegal dealing in premiums, §23-66-310.
Production of books, §23-66-209.
Provisions of act additional to existing law, §23-66-204.
Public policy of state with respect to insurance agents, §23-66-307.
Rebates.
Prohibited, §23-66-308.
Rules and regulations.
Promulgation, §23-66-207.
Service of process, §23-66-209.
Short title, §23-66-201.
Title of subchapter, §23-66-201.
Violations.
Change or replacement of policy without required actions, §23-66-307.
Generally, §23-66-315.
Witnesses, §23-66-209.
Immunity from prosecutions, §23-66-214.
Unjustified refusal to permit business because of similar name, §23-63-103.

INSURANCE COMPANIES —Cont'd
Use of credit information in personal insurance act, §§23-67-401 to 23-67-415.

INSURANCE FRAUD.
Commissioner.
Investigative authority, §23-66-504.
Provision of information to commissioner, §23-66-505.
Criminal investigation division, §23-66-508.
Funeral benefits.
Sale of prepaid benefits.
Investigations, §23-40-106.
Other law enforcement or regulatory authority, §23-66-509.
Trust fund, §§23-100-101 to 23-100-107.
Creation, §23-100-103.
Fees, §§23-100-104, 23-100-105.
Insurers' payment extensions, §23-100-102.
Rules and regulations, §23-100-106.
Title, §23-100-101.
Vouchers, §23-100-107.
Warrants, §23-100-107.
Definitions, §23-66-501.
False advertising.
Federal or state government endorsement, §23-66-609.
Fraud warning, §23-66-503.
Immunity from liability, §23-66-506.
Initial appointment investigation, §23-66-513.
Insurer antifraud initiative, §23-66-510.
Penalties, §23-66-512.
Prohibited acts, §23-66-502.
Reports.
Immunity from liability, §23-66-506.
Mandatory reporting, §23-66-505.
Confidentiality, §23-66-507.
Rules and regulations, §23-66-511.

INSURANCE POLICIES.
Actions.
Attorney's fees.
Allowance of fees in suits to terminate, modify or reinstate policy, §23-79-209.
Suits against insurers, §23-79-209.
Limitation of actions, §23-79-202.
Suits against insurers, §23-79-202.
Automobile liability insurers.
Power to sue certain insurers, §23-79-201.
Damages and attorney's fees on loss claims, §23-79-208.

INSURANCE POLICIES —Cont'd
Actions —Cont'd
Suits against insurers —Cont'd
Disclosure upon request of person injured or damaged, §23-79-210.
Evidence of death of person in military service, §23-79-206.
Liability insurer may be sued direct where insured not subject to suit for tort, §23-79-210.
Part of policy, §23-79-210.
Purpose of law, §23-79-210.
Service of process, §23-79-205.
Substantial compliance as to fire insurance of personal property, §23-79-207.
Trial by jury, §23-79-203.
Venue, §23-79-204.
Agents.
Information about agents to be contained on policy, §23-79-138.
Annuities.
Assignability of rights, §23-79-134.
Contestability, §23-81-123.
Dividends, §23-81-126.
Entire contract provisions, §23-81-124.
Exemption of proceeds, §23-79-134.
Grace period, §23-81-122.
Incontestability, §23-81-123.
Misstatement of age, §23-81-125.
Reinstatement, §23-81-127.
Standard provisions, §23-81-121.
Annuity and pure endowment contracts, §23-81-121.
Reversionary annuities, §23-81-128.
Appeals.
Commercial property and casualty insurance policies.
Appeals from orders of commissioner, §23-79-309.
Applications.
Alteration, §23-79-106.
Evidence, §23-79-106.
Filing, §23-79-109.
Forms, §23-79-109.
Grounds for disapproval, §23-79-110.
Rejection.
Return of premium to rejected applicant, §23-79-108.
Representations in applications, §23-79-107.
Required, §23-79-105.
Warranties.
Statements in applications deemed representations and not warranties, §23-79-107.
Assignment, §23-79-124.
Binders, §23-79-120.

INSURANCE POLICIES —Cont'd
Bylaw provisions, §23-79-113.
Cancellation of policies or contracts.
Prohibited grounds, §23-63-110.
When insured not at fault, §23-79-152.
Casualty insurance.
Cancellation, §§23-89-301, 23-89-303 to 23-89-308.
Grounds, §23-89-303.
No liability or cause of action against persons for information or statements relating to cancellation, §23-89-308.
Proof of mailing of notices, §23-89-306.
Time for notice, §23-89-304.
Definitions, §23-89-301.
First party coverage.
Required coverage, §23-89-202.
Grounds for cancellation of policy, §23-89-303.
Nonrenewal.
No liability or cause of action against persons for information or statements relating to cancellation or nonrenewal of policies, §23-89-308.
Notice, §23-89-305.
Proof of mailing of notices, §23-89-306.
Statement of grounds for nonrenewal, §23-89-305.
Passengers.
Coverage for passengers and others not occupying another vehicle, §23-89-204.
Rejection of coverage, §23-89-203.
Charter provisions, §23-79-113.
Children's Preventive Health Care Act.
Required provisions, §23-79-141.
Claims.
Administration not waiver, §23-79-127.
Health, medical or surgical plan or accident claims of $300 or less.
Nonpayment.
Penalty for late or nonpayment of claim, §23-79-135.
Claims or loss histories, §23-66-318.
Combination policies, §23-79-117.
Commercial property and casualty insurance policies.
Minimum standards.
Administrative procedures, §23-79-309.
Appeals.
Orders of commissioner, §23-79-309.

INSURANCE POLICIES —Cont'd
Commercial property and casualty insurance policies —Cont'd
Minimum standards —Cont'd
Applicability of subchapter, §23-79-303.
Cancellation.
Extended reporting period provided at no additional charge, §23-79-306.
Certificate of authority.
Revocation or suspension for violation of subchapter, §23-79-305.
Claims-made policy.
Content requirements, §23-79-306.
Defined, §23-79-302.
Construction and interpretation.
Applied in accordance with provisions of subchapter, §23-79-308.
Effect of subchapter upon prior law, §23-79-304.
Definitions.
Claims-made policy, §23-79-302.
Exceptions to subchapter, §23-79-303.
Fire law.
Effect of subchapter upon, §23-79-304.
Hearings.
Violations of subchapter, §23-79-305.
Intent of subchapter, §23-79-301.
Limitation of liability.
Standards policies required to meet, §23-79-307.
Notice.
Violations of subchapter, §23-79-305.
Orders.
Violations of subchapter, §23-79-305.
Penalties.
Violations of subchapter, §23-79-305.
Purposes of subchapter, §23-79-301.
Reporting period.
Extended reporting period upon cancellation or termination, §23-79-306.
Rules and regulations.
Promulgation, §23-79-310.
Standards policies required to meet, §23-79-307.
Termination.
Extended reporting period provided at no additional charge, §23-79-306.

INSURANCE POLICIES —Cont'd
Commercial property and casualty insurance policies —Cont'd
Minimum standards —Cont'd
Violations of subchapter.
Statement of alleged violations, §23-79-305.
Motor vehicle coverage.
Extraterritorial provisions, §23-79-311.
Stepdowns, §23-79-312.
Punitive damages exclusion, §23-79-307.
Renewal, §23-79-307.
Companies.
Information about companies to be contained on policy, §23-79-138.
Concealment of facts.
Recovery under policy or contract, §23-79-107.
Construction and interpretation.
Commercial property and casualty insurance policies.
Construed and applied in accordance with subchapter, §23-79-308.
Effect of subchapter upon prior law, §23-79-304.
Construction of policies, §23-79-119.
Contents.
Generally, §§23-79-111, 23-79-112.
Required provisions, §23-79-112.
Credit life and disability insurance.
Amounts of insurance authorized, §23-87-108.
Certificates.
Delivery of policy or certificate, §23-87-111.
Disclosure of provisions to debtors, §23-87-110.
Compensation.
Limitations, §23-87-117.
Delivery, §23-87-111.
Enforcement of provisions, §23-87-118.
Existing insurance.
Choice of insurer, §23-87-116.
Forms.
Filing, approval and withdrawal, §23-87-112.
Issuance, §23-87-114.
Allowable forms, §23-87-107.
Penalties for violations, §23-87-106.
Premiums.
Schedules of premium rates, §23-87-113.
Provisions required.
Disclosure to debtors, §23-87-110.
Terms of insurance, §23-87-109.

INSURANCE POLICIES —Cont'd
Definitions, §23-79-101.
Claims-made policy, §23-79-302.
Large commercial risks, §23-79-109.
Life and health insurance policy language simplification, §23-80-203.
Delivery of policy, §23-79-121.
Discharge.
Payment discharges insurer, §23-79-125.
Domestic stock and mutual insurers.
Dividends to mutual policyholders, §23-69-130.
Issuance, §23-69-115.
Management and exclusive agency contracts, §23-69-137.
Nonassessable policies, §23-69-125.
Revocation of authority, §23-69-125.
Entitlement notwithstanding policy provisions.
Health services performed by professionals not licensed under Arkansas medical practices act, §23-79-114.
Services performed by outpatient centers, §23-79-115.
Execution of policies, §23-79-116.
Construction of policies, §23-79-119.
Expiration.
Renewal by certificate, §23-79-123.
Farmers' mutual aid association.
Management and exclusive agency contracts, §23-69-137.
Fire insurance.
Valued policy law, §23-88-101.
Forms.
Approval, §23-79-109.
Grounds for disapproval, §23-79-110.
Noncomplying forms.
Validity, §23-79-118.
Proof of loss forms.
Furnishing, §23-79-126.
Group accident insurance.
Impairment of speech or hearing.
Hearing devices exempt from coverage, §23-79-130.
Offer of coverage, §23-79-130.
Rejection of coverage, §23-79-130.
Time for acceptance, §23-79-130.
Health insurance.
Adopted minors.
Coverage for adopted minors, §23-79-137.
Applications, §23-79-105.
Exemption of proceeds, §23-79-133.

INSURANCE POLICIES —Cont'd
Hearings.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Husband and wife.
Married woman's right to insure husband's life, §23-79-128.
Industrial life insurance.
Alteration.
Authority to alter contracts, §23-82-113.
Application of provisions to term and specified insurance, §23-82-103.
Applications.
Statements in application, §23-82-106.
Beneficiaries.
Designation, §23-82-114.
Cash surrender value, §23-82-110.
Contestability, §23-82-107.
Conversion, §23-82-116.
Dividends, §23-82-109.
Grace period, §23-82-105.
Incontestability, §23-82-107.
Misstatement of age, §23-82-108.
Nonforfeiture benefits, §23-82-110.
Policies.
Offering, delivering or issuing for delivery.
Prohibited on or after January 1, 1988, §23-82-104.
Premiums.
Direct payment, §23-82-115.
Prohibited provisions, §23-82-118.
Reinstatement, §23-82-111.
Settlement, §23-82-112.
Title, §23-82-117.
Information to be contained, §23-79-138.
Insurable interest.
Personal insurance, §23-79-103.
Property, §23-79-104.
Interstate insurance product regulation compact, §§23-67-601, 23-67-602.
Investments.
Loans, §23-63-821.
Large commercial risks.
Content requirements for polices in general inapplicable, §23-79-112.
Exemption from filing and approval of forms, §23-79-109.
Renewal by certificate, inapplicability, §23-79-123.

INSURANCE POLICIES —Cont'd
Life and health insurance guaranty association.
Coverage, §23-96-107.
Termination.
Nonpayment of premiums, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Notice to policyholder.
Disclaimer, §23-96-105.
Summary document describing general purpose and current limitations of chapter, §23-96-105.
Reissuance.
Terminated coverage, §23-96-121.
Life and health insurance policy simplification, §§23-80-201 to 23-80-208.
Applicability of provisions, §23-80-204.
Approval of forms, §23-80-208.
Company.
Defined, §23-80-203.
Construction of provisions, §23-80-205.
Insurer.
Defined, §23-80-203.
Policy.
Defined, §23-80-203.
Policy form.
Approval of forms, §23-80-208.
Defined, §23-80-203.
Readability standards, §23-80-206.
Lower scores usable, §23-80-207.
Life insurance.
Alterations.
Entire contract alterations, §23-81-106.
Applications, §23-79-105.
Certificates.
Commissioner's certificate on policy, §23-81-131.
Contestability, §23-81-105.
Dividends, §23-81-108.
Exceptions from Arkansas insurance code, §23-81-401.
Excluded or restricted coverage, §23-81-114.
Exemption of life insurance proceeds as to creditors, §23-79-131.
Grace period, §23-81-104.
Group life insurance.
Exemption of proceeds, §23-79-132.
Holding of proceeds, §23-81-116.
Incontestability, §23-81-105.
After reinstatement, §23-81-129.

INSURANCE POLICIES —Cont'd
Life insurance —Cont'd
Loans, §23-81-109.
Indebtedness deducted from proceeds, §23-81-117.
Interest rates, §23-81-109.
Reinstatement provisions, §23-81-111.
Table of installments, §23-81-110.
Married woman's right to insure husband's life, §23-79-128.
Misstatement of age, §23-81-107.
Mutilated policies, §23-81-133.
Registered policies, §23-81-130.
Registration, §23-81-132.
Reinstatement.
Incontestability after reinstatement, §23-81-129.
Reissuance, §23-81-133.
Reserves.
Maintenance of deposit, §23-81-134.
Restricted or excluded coverage, §23-81-114.
Standard provisions, §23-81-103.
Surrendered policies, §23-81-133.
Title, §23-81-101.
Valuation, §23-81-132.
Variable contracts, §23-81-403.
Authority to regulate variable contracts, §23-81-405.
Licensure requirements for delivery of variable contracts, §23-81-404.
Limitation of actions.
Suits against insurers, §23-79-202.
Major medical benefits coverage, individual health insurance.
Renewal of policy, exceptions, §23-79-119.
Medicare supplement insurance policies, §§23-79-401 to 23-79-410.
Minimum basic benefit policies, §§23-98-101 to 23-98-111.
Applicability of provisions, §23-98-105.
Benefits, §23-98-106.
Commissioner.
Approval of forms and rates, §23-98-110.
Defined, §23-98-102.
Rules and regulations.
Notice and hearing before adoption, §23-98-103.
Cost control.
Managed care and cost control provisions, §23-98-109.
Coverage, §23-98-106.
Disclosure requirements, §23-98-107.
Definitions, §23-98-102.

INSURANCE POLICIES —Cont'd
Minimum basic benefit policies —Cont'd
Disclosure requirements, §23-98-107.
Findings of legislature, §23-98-101.
Forms.
Approval, §23-98-110.
Issuance authorized, §23-98-105.
Disclosure requirements, §23-98-107.
Legislative findings, §23-98-101.
Managed care and cost control provisions, §23-98-109.
Newborn infants.
Coverage, §23-98-106.
Notice, §23-98-108.
Payroll deductions, §23-98-108.
Premiums.
Approval of rates, §23-98-110.
Records.
Requirements for insurers, §23-98-111.
Reports.
Requirements for insurers, §23-98-111.
Rules and regulations.
Notices and hearing before adoption, §23-98-103.
Trusts.
Qualified trust, §23-98-104.
Defined, §23-98-102.
Formation, §23-98-104.
Minors.
Coverage of newborn infants included in all policies covering insured's family, §23-79-129.
Certain coverage required for approval by commissioner, §23-79-129.
Effective date of coverage, §23-79-129.
Minimum basic benefit policies, §23-98-106.
Misrepresentations.
Recovery under policy or contract, §23-79-107.
Mutual assessment life and disability insurers.
Minimum requirements, §23-72-104.
Newborn infants.
Coverage included in all policies covering insured's family, §23-79-129.
Certain coverage required for approval by commissioner, §23-79-129.
Effective date of coverage, §23-79-129.

INSURANCE POLICIES —Cont'd
Newborn infants —Cont'd
Coverage included in all policies covering insured's family —Cont'd
Minimum basic benefit policies, §23-98-106.
Noncomplying forms.
Validity, §23-79-118.
Notice.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Right to return policy or contract, §23-79-112.
Omissions.
Recovery under policy or contract, §23-79-107.
Payment discharges insurer, §23-79-125.
Penalties.
Commercial property and casualty insurance policies.
Violations of subchapter, §23-79-305.
Personal insurance.
Interest insurable, §23-79-103.
Premiums.
Approval or disapproval of rate, §§23-79-109, 23-79-110.
Contracts agreeing to invest premium for benefit of insured or certain class unlawful, §23-79-136.
Investment.
Benefit of insured.
Violations, §23-79-136.
Negotiation, §23-79-122.
Notes, §23-79-122.
Proof of loss forms.
Furnishing, §23-79-126.
Property.
Interest insurable, §23-79-104.
Property and casualty insurance guaranty.
Issuance.
New or renewal policies, §23-90-118.
Property and casualty insurance policy simplification, §§23-80-301 to 23-80-308.
Property insurance.
Valued policy law, §23-88-101.
Reciprocal insurers.
Modifications, §23-70-109.
Nonassessable policies, §23-70-120.
Renewal.
Certificates, §23-79-123.
Rules of construction, §23-79-119.
Return of policy or contract.
Statement of right in policy or contract, §23-79-112.

INSURANCE POLICIES —Cont'd
Riders.
Construction of policies, §23-79-119.
Rights of policyholders, §23-61-115.
Rules and regulations.
Commercial property and casualty insurance policies.
Promulgation, §23-79-310.
Rural risk underwriting association.
Appeals, §23-88-309.
Scope of chapter, §23-79-102.
Service of process.
Suits against insurers, §23-79-205.
Signature, §23-79-116.
Standard or uniform provisions, §23-79-111.
Standards.
Commercial property and casualty insurance policies.
Standards required to be met, §23-79-307.
Stipulated premium insurers.
Issuance, §23-71-111.
Use of name stipulated premium, §23-71-106.
Substance abuse coverage, §23-79-139.
Surety contracts, §§23-63-1001 to 23-63-1004.
Surplus lines.
Endorsement of contract, §23-65-307.
Telephone numbers.
Information to be included, §23-79-138.
Ten day right to return policy, notice in policy, §23-79-112.
Termination, modification or reinstatement of policies.
Allowance of attorney's fees in actions, §23-79-209.
Commercial property and casualty insurance policies.
Extended reporting period, §23-79-306.
Underwriters, §23-79-117.
Unfair competition and trade practices.
Charge for substitution of policy.
Prohibited, §23-66-309.
Overwriting contracts of life insurer, §23-66-313.
Venue.
Suits against insurers, §23-79-204.
Waiver.
Claims administration not waiver, §23-79-127.

INSURANCE PREMIUMS.
Commercial property and casualty insurance policies.
Increase of premiums.
Notice, §23-79-307.
Credit life and disability insurance.
Schedule of premium rates, §23-87-113.
Defined, §23-79-101.
Domestic stock and mutual insurers.
Trust deposit, §23-69-115.
Group and blanket health insurance.
Conversion policy, §23-86-115.
Group annuities and group life insurance.
Payment.
Grace period, §23-83-110.
Health insurance.
Method of payment.
Change, §23-85-139.
Small employer health insurance purchasing groups, §23-86-510.
Unearned premiums.
Refund upon death of insured, §23-85-134.
Unpaid premiums, §23-85-123.
Increase.
Notice required, §23-79-151.
Prohibited grounds, §23-63-110.
Prohibited when insured not at fault, §23-79-152.
Industrial life insurance.
Direct payment, §23-82-115.
Life and health insurance guaranty association.
Insolvent insurers.
Premiums due after an order of liquidation, §23-96-120.
Nonpayment of premiums.
Effect, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Life insurance.
Claims.
Premiums to accompany proceeds, §23-81-118.
Construction of provisions, §23-81-118.
Interest on premiums, §23-81-118.
Payment, §23-81-112.
Minimum basic benefit policies.
Approval of rates, §23-98-110.
Mutual assessment life and disability insurers.
Conversion to level premium plan, §23-72-118.

INSURANCE PREMIUMS —Cont'd
Policies.
Contracts agreeing to invest premium for benefit of insured or certain class unlawful, §23-79-136.
Investment.
Benefit of insured.
Violations, §23-79-136.
Negotiation, §23-79-122.
Notes, §23-79-122.
Rejection of application for insurance.
Return of premium to rejected applicant, §23-79-108.
Rural risk underwriting association.
Net direct written premiums.
Certification of aggregate by commissioners, §23-88-308.
Defined, §23-88-302.
Small employer health insurance.
Base premium rate.
Defined, §23-86-202.
Index rate.
Defined, §23-86-202.
New business premium rate.
Defined, §23-86-202.
Rating period.
Defined, §23-86-202.
Restrictions as to rates, §23-86-204.
Suspension of certain provisions.
Discretion of commissioner, §23-86-208.
Stipulated premium insurers, §§23-71-101 to 23-71-116.
Surplus lines.
Unearned premiums.
Liability of insurer as to losses and unearned premiums, §23-65-312.
Taxes.
Captive insurance companies, §23-63-1614.
Health maintenance organizations, §23-76-131.
Life and health insurance guaranty association.
Member insurers.
Credits, §23-96-115.
Unfair competition and trade practices.
Illegal dealing in premiums, §23-66-310.

INSURANCE PRODUCERS AND SERVICE REPRESENTATIVES.
Agents.
Appointment of agent, §23-64-219.
Broker and agent license combinations, §23-64-224.

INSURANCE PRODUCERS AND SERVICE REPRESENTATIVES —Cont'd
Agents —Cont'd
Burial associations.
Agent license, §23-78-113.
Continuing education, §§23-64-301 to 23-64-307.
Certification of completion, §23-64-306.
Course content and credit.
Determination, §23-64-304.
Courses or programs, §23-64-305.
Exceptions to requirements, §23-64-302.
Extensions of time, §23-64-304.
Newly licensed agent, §23-64-303.
Requirements, §23-64-301.
Exceptions, §23-64-302.
Newly licensed agents, §23-64-303.
Rules and regulations, §23-64-304.
Teachers.
Credits, §23-64-305.
Trust fund, §23-64-307.
Defined, §23-64-102.
Exceptions and exemptions from definitions, §23-64-103.
Display of license, §23-64-220.
Health insurance.
Excess or rejected business, §23-64-225.
Life insurance.
Excess or rejected business, §23-64-225.
Place of business, §23-64-220.
Policies.
Information about agent to be included in policy, §23-79-138.
Probationary status, §23-64-216.
Records.
Keeping, §23-64-220.
Renewal of policies after termination, §23-64-230.
Risk retention and purchasing groups, §§23-94-211, 23-94-213.
Scope of chapter, §23-64-101.
Surplus lines.
Brokers may accept business from agents, §23-65-309.
Termination of appointment, §23-64-219.
Rights of agents following, §23-64-226.
Title insurance.
Generally, §§23-103-401 to 23-103-417.

INSURANCE PRODUCERS AND SERVICE REPRESENTATIVES —Cont'd
Agents —Cont'd
Unfair competition and trade practices.
Favored agent or insurer.
Coercion of debtors, §23-66-312.
Vending machines, §23-64-221.
Brokers.
Affidavits.
Surplus lines, §23-65-306.
Agent and broker license combinations, §23-64-224.
Continuing education, §§23-64-301 to 23-64-307.
Certification of courses completed, §23-64-306.
Course content and credit.
Determination, §23-64-304.
Courses or programs, §23-64-305.
Exceptions to requirements, §23-64-302.
Extension of time, §23-64-304.
Newly licensed brokers, §23-64-303.
Requirements, §23-64-301.
Exceptions, §23-64-302.
Newly licensed brokers, §23-64-303.
Rules and regulations, §23-64-304.
Teachers.
Credit, §23-64-305.
Trust fund, §23-64-307.
Defined, §23-64-102.
Exceptions and exemptions from definitions, §23-64-103.
Display of license, §23-64-220.
Place of business, §23-64-220.
Probationary status, §23-64-216.
Records.
Keeping, §23-64-220.
Risk retention and purchasing groups, §§23-94-211, 23-94-213.
Licenses, §§23-94-211, 23-94-213.
Scope of broker's license, §23-64-207.
Scope of chapter, §23-64-101.
Surplus lines.
Acceptance of business from agents, §23-65-309.
Affidavit, §23-65-306.
Compliance with provisions.
Penalty for failure to comply, §23-65-316.
Licensing of surplus line brokers, §23-65-308.
Revocation, §23-65-317.
Quarterly statement, §23-65-314.
Records, §23-65-313.

INSURANCE PRODUCERS AND SERVICE REPRESENTATIVES —Cont'd
Brokers —Cont'd
Surplus lines —Cont'd
Tax on surplus line brokers, §23-65-315.
Withdrawal of approval of insurer.
Notification of broker, §23-65-319.
Consultants.
Applications, §23-64-204.
Contents, §23-64-214.
Continuance of license, §23-64-215.
Examinations, §23-64-205.
Issuance, §23-64-214.
Partnerships, limited partnerships, joint ventures, limited liability companies, and corporations, §23-64-210.
Required, §23-64-201.
Scope of license, §23-64-207.
Managing general agents.
Citation of act, §23-64-401.
Contract provisions.
Requirements, §23-64-404.
Definitions, §23-64-402.
Duties of insurers, §23-64-405.
Examinations, §23-64-406.
General provisions, §§23-64-401 to 23-64-408.
Independent financial examination, §23-64-405.
Licensure.
Bonds, §23-64-403.
Generally, §23-64-403.
Penalties, §23-64-407.
Representative capacity, §23-64-406.
Rules and regulations, §23-64-408.
Title of act, §23-64-401.
Producers, §§23-64-501 to 23-64-520.
Application for examination, §23-64-505.
Application for license, §23-64-506.
Appointments, §23-64-514.
Assumed names, §23-64-510.
Citation of act, §23-64-501.
Commissions, §23-64-513.
Compensation disclosure, §23-64-520.
Contents of license, §23-64-507.
Definitions, §23-64-502.
Denial of license, §23-64-512.
Exceptions to requirement, §23-64-504.
Exemptions from examination, §23-64-509.
Issuance of license, §23-64-507.
Lines of authority, §23-64-507.
Nonresidents, §23-64-508.
Reciprocity, §23-64-516.

INSURANCE PRODUCERS AND SERVICE REPRESENTATIVES —Cont'd
Producers —Cont'd
Purpose of act, §23-64-501.
Reciprocity, §23-64-516.
Registry, §23-64-519.
Renewal, §23-64-507.
Refusal to renew, §23-64-512.
Reports to commissioner, §23-64-517.
Required, §23-64-503.
Revocation, §23-64-512.
Rules and regulations, §23-64-518.
Scope of act, §23-64-501.
Temporary licensing, §23-64-511.
Termination.
Notice to commissioner, §23-64-515.
Title of act, §23-64-501.
Solicitors.
Defined, §23-64-102.
Scope of chapter, §23-64-101.

INSURANCE SALES CONSUMER PROTECTION ACT, §§23-66-601 to 23-66-610.

INTEREST.
Credit unions.
Loans, §23-35-603.
Public utilities.
Deposits with public utilities, §23-4-206.
Trust companies.
Capital notes or debentures, §23-51-117.

INTERPLEADER AND INTERVENTION.
Insurance.
Unfair competition and trade practices.
Judicial review by intervenor, §23-66-213.
Public utilities, §23-4-306.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Parties to certification proceedings, §23-18-517.

INTERSTATE COMMERCE.
Insurance.
Interstate insurance product regulation compact, §§23-67-601, 23-67-602.
Motor carriers.
Motor carrier act of 1955 not to affect, §23-13-205.

INTERSTATE COMMERCE —Cont'd
Motor carriers —Cont'd
Registration of carriers engaged in interstate commerce, §§23-13-601 to 23-13-605.
Surety requirement, §23-13-228.
Public utilities.
Exemptions from chapter, §23-1-102.
Railroads.
Discrimination.
Provisions not to apply to interstate traffic, §23-4-703.

INTERSTATE COMPACTS.
Surplus lines insurance.
Multistate agreements or contracts, §§23-65-401 to 23-65-403.

INTOXICATION.
Insurance.
Care and treatment of alcohol and drug dependency.
Insurers transacting health, accident or disability insurance in state.
Requirements of group policies, contracts and plans providing hospital and medical coverage, §23-79-139.
Motor carriers.
Prohibited acts, §23-13-258.
Railroads.
Arrests by railroad conductors, §23-12-708.
Authority of conductors to arrest drunken persons and deliver to peace officers, §23-12-708.
Engineer or conductor drunk.
Penalty, §23-12-807.

INVENTORY.
Highways.
State highway and transportation department.
Requiring inventories of property, §23-2-307.
Public service commission.
Commission may require inventories of property, §23-2-307.
Public utilities.
Commission may require inventories of property, §23-2-307.
Title insurance.
Inventory of policy forms and numbers, §23-103-410.

INVESTIGATIONS.
Aviation.
Air commerce.
Powers of transportation commission, §23-14-107.

INVESTIGATIONS —Cont'd
Banking board, §23-46-405.
Banks.
Applications for incorporation, §23-48-304.
Carriers.
Rates and charges.
Change in rates.
Investigation by commission, §23-4-622.
Continuing care providers.
Grounds for investigation, §23-93-114.
Powers of commissioner, §23-93-114.
Electric cooperative corporations.
Rates and charges.
Public service commission, §23-4-908.
Greyhound racing.
Officers, directors and shareholders of franchise holders, §§23-111-405, 23-111-409.
Highways.
State highway and transportation department, §23-2-429.
Powers, §§23-2-310, 23-2-402.
Rates, charges or service of utilities.
Change in rates, §23-4-622.
Preliminary investigation, §23-3-118.
Horse racing.
Racing commission, §23-110-413.
Insurance.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Insurance producers.
Application for license, §23-64-506.
Life settlements.
License application of broker or provider, §23-81-803.
Money services.
Investigation of license applicant.
Currency exchange licenses, §23-55-403.
Money transmission licenses, §23-55-205.
Money transmitters, §23-55-601.
Public service commission.
Commissioner or examiner, §23-2-429.
Powers of commission, §§23-2-310, 23-2-402.
Rates and charges.
Preliminary investigation, §23-3-118.
Surcharge to recover expenditures mandated by public authorities, §23-4-505.
Service of utilities.
Preliminary investigation, §23-3-118.

INVESTIGATIONS —Cont'd
Public utilities.
Powers of regulatory commission, §§23-2-310, 23-2-402.
Preliminary investigation of rates, charges or service by commission, §23-3-118.
Rates and charges.
Change in rates.
Investigation of proposed rates, §23-4-405.
Surcharge to recover expenditures mandated by public authorities.
Investigation by commission, §23-4-505.
Railroads.
Crossings.
Regulation.
State highway commission, §§23-12-1004, 23-12-1007.
Savings and loan associations.
Supervisor.
Powers, §23-37-208.
Securities regulation.
Commissioner.
Powers and duties, §23-42-205.
Trust companies.
Charter application, §23-51-107.
Merger applications, §23-51-151.

INVESTMENTS.
Banks.
Powers and limitations, §23-47-401.
Trust accounts.
Separate accounts required, §23-47-705.
Captive insurance companies, §23-63-1610.
Credit unions.
Authorized investment, §23-35-604.
Electric utility storm recovery securitization financing.
Bond investment and debt status, §23-18-909.
Fraternal benefit societies.
Authorized investments, §23-74-501.
Funds, §23-74-502.
Health maintenance organizations.
Guidelines, §23-76-117.
Hospital and medical service corporations, §23-75-113.
Insurance.
Burial associations.
Collections, §23-78-122.
Companies.
General provisions, §§23-63-801 to 23-63-841.

INVESTMENTS —Cont'd
Legal insurance.
Assets, §23-91-217.
Lotteries.
Proceeds, §23-115-801.
Money services.
Permissible investments, §§23-55-701, 23-55-702.
Savings and loan associations.
Insurance, §23-63-823.
Legal investments in associations, §23-37-512.
Trusts and trustees.
Insurance, §§23-63-819, 23-63-820.

INVESTOR EDUCATION FUND, §23-42-213.

IN VITRO FERTILIZATION.
Health insurance.
Coverage required, §23-85-137.
Group and blanket health insurance, §23-86-118.

J

JOINT BANK ACCOUNTS.
Credit unions, §23-35-504.
Secured and unsecured loans against, §23-35-603.
Savings and loans associations, §23-37-502.

JOINT TENANTS AND TENANTS IN COMMON.
Banks.
Multiple-party accounts, §23-47-204.
Credit unions.
Nonmembers, §23-35-504.

JUDGES.
Railroads.
Passes.
Permitted to accept and use passes, §§23-4-904, 23-4-905.

JUDGMENTS AND DECREES.
Insurance.
Foreign decrees.
Enforcement, §23-61-111.
Reciprocal insurers, §23-70-111.
Subscribers' liability on judgment, §23-70-117.

JURISDICTION.
Broadband systems and services, §23-18-805.
Court of appeals.
Public service commission.
Appeals of orders, §23-2-423.

JURISDICTION —Cont'd
Electric cooperative corporations.
Public service commission, §23-18-308.
Rates and charges.
Jurisdiction not affected, §23-4-907.
Health maintenance organizations.
Revocation or suspension of certificate of authority, appeal of action of commissioner, §23-76-126.
Highways.
State highway and transportation department.
Actions by or against department, §23-1-108.
Interstate transportation services, §23-2-303.
State highway commission, §23-2-209.
Railroad crossings.
Construction and location, §23-12-304.
Insurance.
Delinquency proceedings, §23-68-103.
Holding companies.
Control of or merger with domestic insurer.
Jurisdiction of courts, §23-63-512.
Lotteries.
Retailers, closure of business by commission.
Judicial relief, §23-115-609.
Motor carriers.
Transportation commission.
Injunctions.
Mandatory injunction that commission take jurisdiction, §23-13-209.
Violations of subchapter, §23-13-260.
Pipeline safety act.
Public service commission, §23-15-217.
Violations of provisions, §23-15-212.
Public service commission, §§23-2-301, 23-2-302.
Actions by or against commission, §23-1-108.
Appeals of orders.
Court of appeals, §23-2-423.
Electric cooperative corporations, §§23-18-201, 23-18-308.
Federal aid.
Certain loans not within jurisdiction of commission, §23-18-202.
Intrastate transportation services, §23-2-303.
Rate making.
Exclusive jurisdiction, §23-4-201.
Rural telecommunications cooperatives, §23-17-206.

JURISDICTION —Cont'd
Public utilities.
Navigable water crossings.
Public service commission, §23-3-503.
Railroads.
Crossings.
State highway commission.
Construction and location, §23-12-304.
Livestock.
Killing or injuring.
Actions for damages, §23-12-909.
Rural telecommunications cooperatives.
Public service commission, §23-17-206.

JURY AND JURY TRIAL.
Highways.
State highway and transportation department.
Actions by or against department.
Trial without jury, §23-1-110.
Public service commission.
Actions by or against commission.
Tried without jury, §23-1-110.
Water power companies.
Eminent domain.
Assessment of compensation, §23-18-406.

L

LABORATORIES.
Lotteries.
Testing and evaluation of games, §23-115-205.

LAW ENFORCEMENT OFFICERS.
Railroads, §§23-12-701 to 23-12-708.
Used motor vehicle buyers protection.
Disbursement of fines, §23-112-603.

LEASES.
Banks.
Dissolution and liquidation.
Rejection of leases, §23-49-112.
Motor carriers.
Insurance policies on leased motor vehicles.
Notice of cancellation or termination, §23-13-104.
Lessor to unauthorized person deemed motor carrier, §23-13-259.
Motor vehicles.
Lessors.
Unlawful practices, §23-112-404.

LEASES —Cont'd
Rural telecommunications cooperatives.
Authority of board, §23-17-231.
Trust companies.
Dissolution and liquidation.
Rejection of leases, §23-49-112.

LEGAL INSURANCE, §§23-91-201 to 23-91-227.

LETTERS OF CREDIT.
Lottery vendors, §23-115-502.
Professional employer organizations.
Letter of credit in lieu of bond, §23-92-408.

LICENSES AND PERMITS.
Automobile clubs or associations.
Agents, §23-77-108.
Bingo.
Charitable bingo and raffles enabling act.
Authorized organizations licensing, §§23-114-301 to 23-114-307.
Charitable bingo and raffles enabling act, §§23-114-301 to 23-114-307.
Continuing care providers, §§23-93-201 to 23-93-207.
Currency exchange licenses, §§23-55-401 to 23-55-404.
Health maintenance organizations.
Requirement, §23-76-106.
Highways.
State highway and transportation department.
Assignability.
Indeterminate permits granted under 1919 act, §23-1-113.
Legal insurance.
Agents, §23-91-219.
Life settlement providers or brokers.
Examination of licensees or applicants, §23-81-807.
Required, §23-81-803.
Suspension, revocation or refusal to renew, §23-81-804.
Lotteries.
Retailers, §§23-115-601 to 23-115-604.
Money transmitters, §§23-55-201 to 23-55-207.
Mortgage bankers, brokers and servicers, §§23-39-501 to 23-39-518.
Professional employer organizations.
Employer service assurance organizations, §23-92-415.

LICENSES AND PERMITS —Cont'd
Professional employer organizations —Cont'd
Fees, §23-92-407.
Issuance, §23-92-410.
Requirement, §23-92-404.
Revocation or suspension, §23-92-410.
Transfer or assignment, §23-92-406.
Raffles.
Charitable bingo and raffles enabling act.
Authorized organizations licensing, §§23-114-301 to 23-114-307.
Trust companies.
Voluntary liquidation, §23-51-158.
Uniform money services act, §§23-55-201 to 23-55-207.

LIENS.
Continuing care providers.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Credit unions.
Shares.
Lien on shares, §23-35-501.
Lotteries.
Withholding from prizes.
Debtors owing money to state, list of name constituting lien, §23-115-1004.
Mortgages and deeds of trust.
Reverse mortgages, §23-54-107.
Motor carriers.
Fines and penalties, §23-13-263.
Public utilities.
Creation under supervision of regulatory commissions, §23-3-103.
Rural telecommunications cooperatives.
After acquired property, §23-17-232.
Savings and loan associations.
Savings accounts, §23-37-509.

LIEUTENANT GOVERNOR.
Railroads.
Passes.
Permitted to accept and use pass, §23-4-804.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION, §§23-96-101 to 23-96-121.
Accounts and accounting.
Accident and health insurance account.
Maintenance by association, §23-96-109.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION —Cont'd
Accounts and accounting —Cont'd
Life insurance and annuity account.
Maintenance by association, §23-96-109.
Advertisement of act in insurance sales.
Prohibited, §23-96-105.
Appearance and intervention before courts.
Power, §23-96-110.
Applicability of chapter, §23-96-103.
Assessments.
Member insurers, §23-96-115.
Assignment of rights, §23-96-114.
Benefits, §23-96-114.
Board of directors, §23-96-109.
Assessment of member insurers, §23-96-115.
Impairments or insolvencies.
Detection and prevention.
Procedure, §23-96-117.
Citation of chapter, §23-96-101.
Commissioner.
Insolvencies or impairments.
Detection and prevention, §23-96-117.
Powers and duties, §23-96-118.
Supervision and regulation, §23-96-109.
Companies.
Board of directors, §23-96-109.
Assessment of member insurers, §23-96-115.
Impairments or insolvencies, detection and prevention.
Procedure, §23-96-117.
Impaired insurers, §23-96-111.
Authority of association, §23-96-113.
Detection and prevention of impairments, §23-96-117.
Distributions of ownership rights, §23-96-119.
Insolvent insurers, §23-96-112.
Authority of association, §23-96-113.
Detection and prevention of insolvencies, §23-96-117.
Distributions of ownership rights, §23-96-119.
Premiums due after an order of liquidation, §23-96-120.
Member insurers, §23-96-109.
Plan of operation.
Compliance, §23-96-116.
Construction and interpretation.
Applicability of chapter, §23-96-103.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION —Cont'd
Construction and interpretation —Cont'd
Purpose of chapter, §23-96-102.
Scope of chapter, §23-96-106.
Created, §23-96-109.
Definitions, §23-96-104.
Delegation of authority.
Plan of operation, §23-96-116.
Disclaimer.
Notice to policyholder, §23-96-105.
Domestic life or accident and health insurer.
Authority to exercise powers of, §23-96-110.
Duties.
Generally, §23-96-110.
Examination by commissioner, §23-96-109.
Functions.
Generally, §23-96-109.
General provisions, §§23-96-101 to 23-96-121.
Immunity from liability, §23-96-108.
Impaired insurers, §23-96-111.
Assessments, §23-87-115.
Authority of association, §23-96-113.
Detection and prevention of impairments, §23-96-117.
Distributions of ownership rights, §23-96-119.
Insolvent insurers, §23-96-112.
Authority of association, §23-96-113.
Detection and prevention of insolvencies, §23-96-117.
Distributions of ownership rights, §23-96-119.
Premiums due after an order of liquidation, §23-96-120.
Legislative declaration.
Purpose of chapter, §23-96-102.
Liability.
Benefits, §23-96-114.
Immunity from liability, §23-96-108.
Nonpayment of premiums.
Termination of association's obligations, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Meetings.
Open meetings, §23-96-109.
Member insurers, §23-96-109.
Assessments, §23-96-115.
Plan of operation.
Compliance, §23-96-116.
Tax credits, §23-96-115.

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION —Cont'd
Notice to policyholder, §23-96-105.
Plan of operation, §23-96-116.
Policies.
Coverage, §23-96-107.
Termination.
Nonpayment of premiums, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Notice to policyholder.
Disclaimer, §23-96-105.
Summary document describing general purpose and current limitations of chapter, §23-96-105.
Reissuance.
Terminated coverage, §23-96-121.
Powers.
Exercisable through board of directors, §23-96-109.
Generally, §23-96-110.
Premiums.
Insolvent insurers.
Premiums due after an order of liquidation, §23-96-120.
Nonpayment of premiums.
Effect, §23-96-120.
Reissuance of terminated coverage, §23-96-121.
Premium taxes.
Member insurers.
Credits, §23-96-115.
Purpose of chapter, §23-96-102.
Records.
Open records, §23-96-109.
Reinsurance contracts.
Assumption by association, §23-96-110.
Reports.
Board of directors.
Annual report, §23-96-109.
Scope of chapter, §23-96-106.
Subrogation rights, §23-96-114.
Tax credits.
Member insurers, §23-96-115.
Tax exemption, §23-96-109.
Title of chapter, §23-96-101.

LIFE INSURANCE.
Agents.
Excess or rejected business, §23-64-225.
Applicability of chapter, §23-81-102.
Beneficiaries.
Unnamed beneficiaries.
Prohibited, §23-81-120.

LIFE INSURANCE —Cont'd
Benefits.
Fixed amounts, §23-81-402.
Payment in fixed and/or variable amounts, §23-81-402.
Variable amounts, §23-81-402.
Certificates.
Deposits.
Fees for certificate, §23-81-131.
Policies.
Commissioner's certificate on policy, §23-81-131.
Claims.
Interest on proceeds, §23-81-118.
Payment, §23-81-113.
Premiums to accompany proceeds, §23-81-118.
Construction of provisions, §23-81-118.
Contracts.
Overwriting contract of life insurer, §23-66-313.
Defined, §23-62-102.
Deposits.
Capital deposits may be credited, §23-81-135.
Certificates.
Fee for certificate, §23-81-131.
Duration and release of deposits, §23-63-912.
Reserves, §23-81-130.
Deficiency of deposit, §23-81-136.
Deposit of capital may be credited, §23-81-135.
Dividends.
Policy provisions, §23-81-108.
Fees.
Certificates, §23-81-131.
Grace period, §23-81-104.
Group life insurance and annuities, §§23-83-101 to 23-83-126.
Holding of proceeds, §23-81-116.
Husband and wife.
Married woman's right to insure husband's life, §23-79-128.
Industrial life insurance.
Applicability of chapter, §23-82-102.
Beneficiaries.
Policies.
Designation of beneficiary on policies, §23-82-114.
Benefits.
Nonforfeiture benefits, §23-82-110.
Definitions, §23-82-101.
Dividends.
Policies, §23-82-109.
Grace period, §23-82-105.

LIFE INSURANCE —Cont'd
Industrial life insurance —Cont'd
Policies.
Alteration.
Authority to alter contracts, §23-82-113.
Application of provisions to term and specified insurance, §23-82-103.
Applications.
Statements in application, §23-82-106.
Beneficiaries.
Designation, §23-82-114.
Cash surrender value, §23-82-110.
Contestability, §23-82-107.
Conversion, §23-82-116.
Dividends, §23-82-109.
Grace period, §23-82-105.
Incontestability, §23-82-107.
Misstatement of age, §23-82-108.
Nonforfeiture benefits, §23-82-110.
Offering, delivering or issuing for delivery in state.
Prohibited on or after January 1, 1988, §23-82-104.
Premiums.
Direct payment, §23-82-115.
Prohibited provisions, §23-82-118.
Reinstatement, §23-82-111.
Settlement, §23-82-112.
Title, §23-82-117.
Premiums.
Direct payment, §23-82-115.
Interest.
Claims, §23-81-118.
Premiums, §23-81-118.
Liabilities.
Limitation, §23-81-115.
Licenses.
Contracts.
Variable contracts.
Licensure requirements, §23-81-404.
Life and health insurance guaranty association.
Impaired insurers.
Assessments, §23-87-115.
Life settlements, §§23-81-801 to 23-81-818.
Limitation of liability, §23-81-115.
Loans.
Policy loans, §23-81-109.
Indebtedness deducted from proceeds, §23-81-117.
Interest rate, §23-81-109.
Reinstatement provisions, §23-81-111.

LIFE INSURANCE —Cont'd
Loans —Cont'd
Policy loans —Cont'd
Table of installments, §23-81-110.
Material transactions disclosures, §§23-63-1401 to 23-63-1406.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.
Nonforfeiture law.
Applicability of law, §23-81-202.
Effective dates, §23-81-213.
Calculation of adjusted premiums and present values, §§23-81-206 to 23-81-210.
Future adjusted premiums, §23-81-210.
Industrial policies issued on or after January 1, 1960, §23-81-208.
Ordinary policies issued on or after March 16, 1961, §23-81-207.
Policies issued before January 1, 1982, §§23-81-206, 23-81-209.
Cash surrender value, §23-81-204.
Calculation in event of default, §§23-81-211, 23-81-212.
Citation of law.
Short title, §23-81-201.
Effective date, §23-81-213.
Exceptions to provisions, §23-81-202.
Paid-up benefits, §23-81-205.
Required provisions, §23-81-203.
Short title of law, §23-81-201.
Surrender of policies.
Cash surrender value, §23-81-204.
Calculation in event of default, §§23-81-211, 23-81-212.
Required provisions, §23-81-203.
Title of law.
Short title, §23-81-201.
Nonforfeiture law for individual deferred annuities.
Additional benefits, §23-81-311.
Applicability of law, §23-81-302.
Effective date, §23-81-312.
Calculation of cash surrender values, §§23-81-306, 23-81-308.
Calculation of minimum values, §23-81-304.
Calculation of paid-up annuity benefits, §§23-81-307, 23-81-308.
Calculation of present value, §23-81-305.
Cash surrender values.
Calculation, §23-81-306.
Maturity date, §23-81-308.
Citation of law.
Short title, §23-81-301.

LIFE INSURANCE —Cont'd
Nonforfeiture law for individual deferred annuities —Cont'd
Contracts.
Disclosure of limited death benefits, §23-81-309.
Required provisions, §23-81-303.
Death benefits.
Limited death benefits.
Disclosure, §23-81-309.
Effective date, §23-81-312.
Exceptions to provisions, §23-81-302.
Inclusion of lapse of time considerations, §23-81-310.
Lapse of time considerations.
Inclusion, §23-81-310.
Limited death benefits.
Disclosure, §23-81-309.
Maturity date, §23-81-308.
Minimum values, §23-81-304.
Calculation, §23-81-304.
Paid-up annuity benefits.
Calculation, §23-81-307.
Maturity date, §23-81-308.
Present value.
Computation, §23-81-305.
Proration of values, §23-81-311.
Required provisions, §23-81-303.
Rules and regulations, authority to promulgate, §23-81-313.
Short title of law, §23-81-301.
Title of law.
Short title, §23-81-301.
Policies.
Alterations.
Entire contract alterations, §23-81-106.
Applications, §23-79-105.
Certificates.
Commissioner's certificate on policy, §23-81-131.
Contestability, §23-81-105.
Dividends, §23-81-108.
Exceptions from Arkansas insurance code, §23-81-401.
Excluded or restricted coverage, §23-81-114.
Exemption of life insurance proceeds as to creditors, §23-79-131.
Grace period, §23-81-104.
Group life insurance.
Exemption of proceeds, §23-79-132.
Holding of proceeds, §23-81-116.
Incontestability, §23-81-105.
After reinstatement, §23-81-129.
Language simplification, §§23-80-201 to 23-80-208.

LIFE INSURANCE —Cont'd
Policies —Cont'd
Loans, §23-81-109.
Indebtedness deducted from proceeds, §23-81-117.
Interest rates, §23-81-109.
Reinstatement provisions, §23-81-111.
Table of installments, §23-81-110.
Married woman's right to insure husband's life, §23-79-128.
Misstatement of age, §23-81-107.
Mutilated policies, §23-81-133.
Registered policies, §23-81-130.
Registration, §23-81-132.
Reinstatement.
Incontestability after reinstatement, §23-81-129.
Reissuance, §23-81-133.
Reserves.
Maintenance of deposit, §23-81-134.
Restricted or excluded coverage, §23-81-114.
Standard provisions, §23-81-103.
Surrendered policies, §23-81-133.
Title, §23-81-101.
Valuation, §23-81-132.
Variable contracts, §23-81-403.
Authority to regulate variable contracts, §23-81-405.
Licensure requirements for delivery of variable contracts, §23-81-404.
Policy language simplification, §§23-80-201 to 23-80-208.
Applicability, §23-80-204.
Citation of act, §23-80-201.
Company.
Defined, §23-80-203.
Construction, §23-80-205.
Insurer.
Defined, §23-80-203.
Minimum standards, §23-80-206.
Approval of forms, §23-80-208.
Authorization to use lower score, §23-80-207.
Policy or policy form.
Defined, §23-80-203.
Purpose, §23-80-202.
Premiums.
Claims.
Premiums to accompany proceeds, §23-81-118.
Construction of provisions, §23-81-118.
Interest on premiums, §23-81-118.
Payment, §23-81-112.
Proceeds.
Exemption of life insurance proceeds as to creditors, §23-79-131.

LIFE INSURANCE —Cont'd
Registered policies, §23-81-130.
Reinstatement.
Incontestability after reinstatement, §23-81-129.
Reserves.
Deposit of reserves, §23-81-130.
Capital deposits may be credited, §23-81-135.
Deficiency of deposit, §23-81-136.
Maintenance of deposits, §23-81-134.
Risk-based capital act, §§23-63-1301 to 23-63-1316.
Scope of chapter, §23-81-102.
Settlements.
Life settlements, §§23-81-801 to 23-81-818.
Simplification of policy language, §§23-80-201 to 23-80-208.
Standard nonforfeiture law, §§23-81-201 to 23-81-213.
Standard valuation law for life insurance and annuities, §§23-84-101 to 23-84-113.
Terminated producers.
Settlement with, §23-64-231.
Unfair competition and trade practices.
Business development compensation to life policyholders prohibited, §23-66-311.
Requirements when agent seeks to change or replace existing policy, §23-66-307.
Unnamed beneficiaries.
Prohibited, §23-81-120.
Valuation law for life insurance and annuities.
Actuarial opinion of reserves, §23-84-112.
Calculation of reserves, §§23-84-106 to 23-84-113.
Citation of law.
Short title, §23-84-101.
Commissioner of insurance.
Valuation of reserves by, §23-84-102.
Interest rates.
Minimum standard for valuation, §23-84-105.
Minimum standard for valuation, §§23-84-103 to 23-84-105.
Annuity contracts, §23-84-104.
Interest rates, §23-84-105.
Pure endowment contracts, §23-84-104.
Premiums.
Future premium determinations by life insurers, §23-84-113.

LIFE INSURANCE —Cont'd
Valuation law for life insurance and annuities —Cont'd
Reserves.
Actuarial opinion of reserves, §23-84-112.
Calculation, §§23-84-106 to 23-84-113.
Annuity contracts, §23-84-107.
Future premium determinations by life insurers, §23-84-111.
Life insurance policies and contracts, §23-84-110.
Minimum aggregate reserves for life insurance policies, §23-84-108.
Pure endowment contracts, §23-84-107.
Standards of valuation, §23-84-109.
Minimum aggregate reserves for certain life insurance policies, §23-84-108.
Valuation by commissioner, §23-84-102.
Rules and regulations, §23-84-113.
Standard for valuation.
Minimum standard, §§23-84-103 to 23-84-105.
Title.
Short title, §23-84-101.

LIFELINE INDIVIDUAL VERIFICATION EFFORT CORPORATION, §§23-16-401 to 23-16-413.
Annual report, §23-16-413.
Arkansas lifeline individual effort corporation act.
Title of act, §23-16-401.
Articles of incorporation.
Filing, §23-16-411.
Assessment on eligible telecommunications carriers, §23-16-405.
Audit annually, §23-16-410.
Board of directors, §23-16-403.
Attendance at meetings.
Required, removal for unexcused absence, §23-16-404.
Created, §23-16-403.
Definitions, §23-16-402.
Election not to participate, §23-16-406.
Indebtedness.
Incurring prohibited, §23-16-408.
Offices, §23-16-409.
Participation optional, §23-16-406.

LIFELINE INDIVIDUAL VERIFICATION EFFORT CORPORATION —Cont'd
Powers and duties, §23-16-407.
Purchase of telecommunication services.
Competitive bid, §23-16-412.
Purchase or lease of real property.
Use of assets for prohibited, §23-16-408.
Volunteers and professional services.
Reliance up, §23-16-408.

LIFE SETTLEMENTS, §§23-81-801 to 23-81-818.
Advertising, §23-81-808.
Agent for service of process, designation required for license, §23-81-803.
Antifraud initiatives, §23-81-814.
Civil penalties, §23-81-815.
Conflict of laws, §23-81-812.
Consent of owner, §23-81-811.
Contracts.
Approval requirements, §23-81-805.
Disclosures to owners, §23-81-809.
Prerequisites, §23-81-811.
Rescission, §23-81-811.
Criminal penalties, §23-81-816.
Definitions, §23-81-802.
Disclosures to insurers, §23-81-810.
Disclosures to owners, §23-81-809.
Effective date of provisions, §23-81-818.
Examination of licensees or applicants, §23-81-807.
Failure to file annual statement, §23-81-806.
Failure to tender proceeds to owner, §23-81-811.
Financing.
Disclosures to insurer, §23-81-810.
Prohibited agreements, §23-81-813.
Fraudulent life settlement acts.
Civil penalties, §23-81-815.
Criminal penalties, §23-81-816.
Enumerated, §23-81-813.
Prevention and control, §23-81-814.
Unfair trade practices, §23-81-817.
Identifying information of insured, disclosure, §23-81-806.
Inquiries from insurer to owner, §23-81-810.
Insurer responsibility for acts or omissions of broker, provider or purchaser, §23-81-803.
Law enforcement or other regulatory authority, §23-81-814.

LIFE SETTLEMENTS —Cont'd
Licensing of providers or brokers.
Examination of licensees or applicants, §23-81-807.
Required, §23-81-803.
Suspension, revocation or refusal to renew, §23-81-804.
Notice to insurer, §23-81-811.
Pending transactions, §23-81-818.
Prerequisites to contract, §23-81-811.
Prohibited acts, §23-81-813.
Civil penalties, §23-81-815.
Criminal penalties, §23-81-816.
Unfair trade practices, §23-81-817.
Prohibition on entering contract, §23-81-811.
Record retention requirements, §23-81-807.
Reporting by providers, §23-81-806.
Reporting of fraudulent life settlement acts, §23-81-814.
Rescission of contract, §23-81-811.
Rules promulgation for implementation of provisions, §23-81-812.
Title of act, §23-81-801.
Training of brokers, §23-81-803.
Unfair trade practices, §23-81-817.
Verification of coverage, §23-81-811.
Violation of provisions, §23-81-813.

LIMITATION OF ACTIONS.
Banks.
Dissolution and liquidation.
Notice of claims, §23-49-109.
Comprehensive health insurance pool.
Actions against pool or board of directors, §23-79-516.
Health insurance portability and accountability, §23-86-302.
Insurance.
Comprehensive health insurance pool.
Actions against pool or board of directors, §23-79-516.
Policies.
Suits against insurers, §23-79-202.
Loan brokers.
Advance fee loan brokers.
Action for violations of subchapter, §23-39-405.
Railroads.
Discrimination.
Actions for damages, §23-4-705.
Actions to recover penalty, §23-10-103.
Freight.
Damages for violations of act, §23-10-431.

LIMITATION OF ACTIONS —Cont'd
Rural telecommunications cooperatives.
Suits against telecommunications companies or cooperatives, §23-17-237.
Securities regulations.
Violation of provisions, §23-42-105.
Trust companies.
Dissolution and liquidation.
Notice of claims, §23-49-109.

LINK UP AMERICA.
Lifeline individual verification effort corporation, §§23-16-401 to 23-16-413.

LIQUIDATION.
Fraternal benefit societies.
Domestic societies.
Grounds, §23-74-606.
Procedure, §23-74-606.
Legal insurance.
Companies, §23-91-223.

LOANS.
Agriculture.
Prepayment privileges for certain borrowers.
Loans secured by liens on agricultural lands, §23-32-203.
Banks.
Trust funds.
Loans to officers and employees prohibited, §23-47-707.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Credit unions.
Commission or compensation for loan, §23-35-802.
Credit committee.
Application for loan, §§23-35-306, 23-35-603.
Extensions of credit, §23-35-603.
Interest, §23-35-603.
Limitations, §23-35-603.
Prohibited actions, §23-35-803.
Restriction, §23-35-603.
Criminal law and procedure.
Prepayment privilege for loans secured by agricultural liens.
Violations by lender, §23-32-203.
Fraternal benefit societies.
Benefit contracts.
Certificate loans, §23-74-405.
Industrial loan institutions.
General provisions, §§23-36-101 to 23-36-117.
Insurance.
Credit life and disability insurance, §§23-87-101 to 23-87-119.

LOANS —Cont'd
Insurance —Cont'd
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Servicemen's Readjustment Act, §23-32-205.
Trust companies.
Borrowing limits, §23-51-132.
Lending limits, §23-51-128.

LOBBYISTS AND LOBBYING.
Lottery commission.
Employees of commission.
Restrictions upon leaving employment, §23-115-303.
Prohibitions, §23-115-203.
Public service commission members.
Time limit for registering as after expiration of term of service, §23-2-113.

LOCAL GOVERNMENTS.
Direct actions against insurer, §23-79-210.
Insurance.
Direct actions against insurer, §23-79-210.
Lotteries.
Local government authority preempted, §23-115-406.
Public utilities.
Environmental and economic protection.
Powers of local governments, §23-18-526.

LOGS AND LOGGING.
Workers' compensation.
Logging association policies, §§23-67-311, 23-67-312.

LONG-TERM CARE FACILITIES AND ADMINISTRATORS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Continuing care providers, §§23-93-101 to 23-93-207.
Insurance.
Long-term care insurance generally, §§23-97-301 to 23-97-321.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

LONG-TERM CARE INSURANCE, §§23-97-301 to 23-97-321.
Acceleration of death benefits, §23-97-315.
Associations.
Defined, §23-97-304.
Filing requirements, §23-97-305.
Citation of act, §23-97-301.
Claims processing.
Denial of claims, §23-97-316.
Construction of act.
Purpose, §23-97-302.
Scope, §23-97-303.
Short title, §23-97-301.
Contracts or policies of insurance.
Cancellation restrictions, §23-97-307.
Delivery of policy and summary, §23-97-314.
Exclusions, reductions and limitations, §23-97-314.
Incontestability period, §23-97-318.
Nonforfeiture benefits, §23-97-319.
Offers of policy or contract.
Compliance with act, §23-97-317.
Outline of coverage, §23-97-312.
Policy, defined, §23-97-304.
Primary benefits and coverages, §23-97-313.
Right to return, §23-97-311.
Summary of policy, §23-97-314.
Death benefits.
Acceleration of, §23-97-315.
Definitions, §23-97-304.
Preexisting condition, §23-97-308.
Denial of claims, §23-97-316.
Disclosure standards, §23-97-307.
Exclusions, reductions and limitations, §23-97-314.
Free look, §23-97-311.
Group long-term care insurance.
Cancellation restrictions, §23-97-307.
Certificate, defined, §23-97-304.
Contents of certificate, §23-97-313.
Defined, §23-97-304.
Extraterritorial jurisdiction, §23-97-306.
Free look at certificate, §23-97-311.
Incontestability period, §23-97-318.
Nonforfeiture benefits, §23-97-319.
Offering to resident in state under group policy issued in another state, §23-97-306.
Outline of coverage, §§23-97-312, 23-97-313.
Right to return certificate, §23-97-311.
Incontestability period, §23-97-318.
Loss ratio standards, §23-97-310.
Nonforfeiture benefits, §23-97-319.
LONG-TERM CARE INSURANCE —Cont'd
Penalties, §23-97-321.
Performance standards, §23-97-307.
Preexisting condition, §23-97-308.
Prior hospitalization or institutionalization, §23-97-309.
Public policy, §23-97-302.
Rulemaking authority, §23-97-320.
Scope of act, §23-97-303.
Title of act, §23-97-301.
Violations of act, §23-97-321.

LOOKOUT LAW.
Railroads, §23-12-907.

LOTTERIES, §§23-115-101 to 23-115-1102.
Arkansas lottery commission.
Administrative orders, appealing, §23-115-209.
Audits, §23-115-206.
Background checks, §23-115-203.
Borrowing from state, §23-115-803.
Claims against commission, §23-115-208.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Confidential information, §23-115-404.
Created, §23-115-201.
Director, §§23-115-301, 23-115-302.
Employees of commission, §§23-115-301 to 23-115-308.
Administrative statewide information system, participation, §23-115-308.
Background checks, §23-115-303.
Bond requirement, §23-115-303.
Conflicts of interest prohibited, §23-115-303.
Expansion pool for additional employees, §23-115-307.
Public employees' retirement system participation, §23-115-304.
Restrictions upon leaving employment, §23-115-303.
Retailer conflicts, §23-115-601.
Salaries, §23-115-305.
Special allowances, §23-115-306.
Vendor conflicts, §23-115-501.
Internal auditor.
Duties, §23-115-211.
Internal controls and oversight functions, §23-115-206.
Laws not applicable, §23-115-211.
Lottery retailer advisory board, §23-115-204.
Meetings, §23-115-202.

LOTTERIES —Cont'd
Arkansas lottery commission —Cont'd
Members, §23-115-202.
Powers, §23-115-205.
Prize ineligibility, §23-115-403.
Proceeds, §§23-115-801 to 23-115-803.
Procurements, §23-115-701.
Qualifications of members, §23-115-203.
Removal of members, §23-115-210.
Report to legislative oversight committee, §23-115-206.
Director, §23-115-302.
Retailer conflicts of interest, §23-115-601.
Rulemaking, §§23-115-207, 23-115-208.
Verification of validity of tickets, §23-115-403.
Sovereign immunity, §23-115-208.
Vendor conflicts of interest, §23-115-501.
Audits and auditors.
Arkansas lottery commission, §§23-115-206, 23-115-212.
Presence of auditor to determine accuracy of results and winner, §23-115-403.
Borrowing from state, §23-115-803.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Confidential records, §23-115-404.
Agreements with United States government and enforcement or regulatory agencies, §23-115-405.
Withholding from prizes.
Debtors owing money to state.
Confidential information provided to claimant agency, §23-115-1005.
Conflict of laws.
Enforcement provisions, §23-115-904.
Contracts.
Participation by female-owned and minority-owned businesses, §23-115-401.
Vendors, §§23-115-501 to 23-115-504.
Cooperative agreements with United States government and enforcement or regulatory agencies, §23-115-405.
Debtors owing money to state, prize withholding, §§23-115-1001 to 23-115-1006.
Definitions, §23-115-103.
Effect of provisions on other wagering laws, §23-115-409.

LOTTERIES —Cont'd
Eligibility to win, §23-115-402.
Enforcement provisions, §§23-115-901 to 23-115-904.
Female-owned businesses, participation, §23-115-401.
Fidelity fund, §23-115-603.
Financial records and reporting.
Commission internal controls and oversight functions, §23-115-206.
Internal auditor, duties of, §23-115-212.
Fiscal impact statement.
Defined, §23-115-103.
General assembly lottery bills, §23-115-104.
Fraud.
Arkansas lottery commission oversight, §23-115-206.
False statement by retailer on license application, §23-115-903.
Lottery fraud, §23-115-902.
Penalties, §23-115-902.
Prize not to be awarded on certain tickets, §23-115-403.
Gifts from vendors, §23-115-501.
Income tax, prizes subject to, §23-115-403.
Legislative oversight committee, §§23-115-1101, 23-115-1102.
Duties of internal auditor, §23-115-212.
Reports to committee, §23-115-206.
Director, §23-115-302.
Legislative purpose, §23-115-102.
Local government authority preempted, §23-115-406.
Lottery fraud, §23-115-902.
Lottery retailer advisory board, §23-115-204.
Major procurement contracts.
Generally, §23-115-701.
Minority-owned businesses, participation, §23-115-401.
Minors purchasing tickets.
Penalties, §23-115-901.
Prohibition, §23-115-402.
Retailer knowingly allowing, §23-115-207.
Multidraw screen-based lottery games.
Defined, §23-115-103.
Prohibition, §23-115-411.
Multiple claimants to prize, §23-115-403.
Operation of lottery generally, §§23-115-401 to 23-115-411.

LOTTERIES —Cont'd
Penalties for violations, §§23-115-901 to 23-115-904.
Prizes.
Eligibility to win, §23-115-402.
Generally, §23-115-403.
Portion of proceeds available as prizes, §23-115-801.
Withholding from prizes.
Debtors owing money to state, §§23-115-1001 to 23-115-1006.
Proceeds, §§23-115-801 to 23-115-803.
Accounting, §23-115-801.
Borrowing from state, §23-115-803.
Certification of amount needed to fund scholarships, §23-115-801.
Deposit into trust accounts, §23-115-801.
Fiduciary duties, §23-115-605.
Investment, §23-115-801.
Property of commission, §23-115-801.
Scholarship shortfall reserve trust account, §23-115-802.
Procurement contracts.
Bid or proposal requirements, §23-115-501.
Generally, §23-115-701.
Reports.
Arkansas lottery commission.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Retailers.
Administrative orders of commission, appealing, §23-115-209.
Application fee, §23-115-601.
Arkansas lottery commission power to act as, §23-115-205.
Background checks, §23-115-601.
Bonding, §23-115-603.
Closure of business by commission.
Administrative hearing, §23-115-608.
Authority for, §23-115-607.
Grounds, §23-115-607.
Judicial relief, §23-115-609.
License discipline, §23-115-611.
Notice to public, §23-115-610.
Procedures, §23-115-610.
Rules promulgation to implement provisions, §23-115-612.
Compensation, §23-115-601.
Conflicts of interest, §23-115-601.
Fidelity fund fee, §23-115-603.
Fiduciary duties, §23-115-605.
Generally, §§23-115-601 to 23-115-612.
Licenses.
Assignment prohibited, §23-115-602.

LOTTERIES —Cont'd
Retailers —Cont'd
Licenses —Cont'd
Cancellation, suspension or revocation, §23-115-604.
Closure of business by commission as grounds, §23-115-611.
Sales to minors, §23-115-901.
False statement on license application, §23-115-903.
Required, §23-115-601.
Lottery retailer advisory board, §23-115-204.
Minors purchasing tickets, §§23-115-207, 23-115-402.
Penalties, §23-115-901.
Qualification criteria, §23-115-601.
Rent based on percentage of retail sales.
Compensation from lottery considered in computing rental payment, §23-115-606.
Restriction on sale of tickets, §23-115-402.
Small retailer participation, §23-115-601.
Scholarship shortfall reserve trust account, §23-115-802.
Tickets.
Restriction on sale, §23-115-402.
Rulemaking, §23-115-207.
Rules regarding verification, §23-115-403.
Time for claiming prize, §23-115-403.
Title of act, §23-115-101.
Trust fund from sale of tickets or shares, §23-115-605.
Deposit of proceeds, §23-115-801.
Scholarship shortfall reserve trust account, §23-115-802.
Unclaimed prizes, §23-115-403.
Vendors, §§23-115-501 to 23-115-504.
Background checks, §23-115-501.
Bid or proposal requirements, §23-115-501.
Bond or other financial security, §23-115-502.
Cancellation or suspension of contracts, §23-115-503.
Disclosures required, §23-115-501.
Gift prohibitions, §23-115-501.
Political contributions prohibited, §23-115-504.
Video lotteries, prohibition, §§23-115-407, 23-115-408.
Violations, §§23-115-901 to 23-115-904.

LOTTERIES —Cont'd
Withholding from prizes, §23-115-403.
Debtors owing money to state, §§23-115-1001 to 23-115-1006.
Amount of debt collectible from prize, §23-115-1004.
Applicability of provisions, §23-115-1006.
Confidential information provided to claimant agency, §23-115-1005.
Definitions, §23-115-1002.
Legislative intent, §23-115-1001.
List of names to commission, §23-115-1004.
Notice, §23-115-1004.
Payment of prize to claimant agency, §23-115-1004.
Priority of liens, §23-115-1004.
Supplemental nature of collection remedy, §23-115-1003.
Income tax withholding.
Powers of lottery commission, §23-115-205.

LOW PROTEIN MODIFIED FOOD PRODUCTS.
Children with phenylketonuria.
Definitions, §23-79-701.
Health insurance coverage, §23-79-703.
Income tax credit for family of child, §23-79-702.

M

MAIL.
Aviation.
Air commerce.
United States mail exempt from provisions, §23-14-103.
Insurance.
Holding companies.
Control of or merger with domestic insurer.
Mailings generally, §23-63-511.
Portable electronics insurance.
Notice to enrolled customer.
Registered mail, §23-88-506.

MAJOR MEDICAL BENEFITS COVERAGE.
Individual health insurance coverage.
Renewal of policy, exceptions, §23-79-119.

MAJOR UTILITY FACILITIES.
Environmental and economic protection, §§23-18-501 to 23-18-530.

MALPRACTICE.
Insurance rates, §§23-67-501 to 23-67-510.
Administrative procedures, §23-67-508.
Applicability of provisions, §23-67-501.
Criteria for rating, §23-67-503.
Disapproval of rates, §23-67-507.
Effective date of provisions, §23-67-510.
Filing of rates, §23-67-505.
Disapproval of rates, §23-67-507.
Increase of rates, §23-67-506.
Review by commissioner, §23-67-506.
Increase of rates, §23-67-506.
Records and reports, §23-67-504.
Standards, §23-67-502.
Study and report, §23-61-114.
Supplementary nature of provisions, §23-67-509.

MAMMOGRAPHY.
Diagnostic mammography.
Defined, §23-79-140.
Health insurance coverage, §23-79-140.
Screening mammography.
Defined, §23-79-140.

MANAGED HEALTH PLANS.
Grievance systems and quality assessment and improvement systems, §§23-99-701 to 23-99-706.
Benefits offered, inapplicability of director's regulatory authority, §23-99-705.
Definitions, §23-99-702.
Grievance system, §23-99-703.
Insurance exempted from provisions, §23-99-705.
Legislative findings, §23-99-701.
Power to implement and enforce provisions, §23-99-706.
Quality assessment and improvement systems, §23-99-704.

MANDAMUS.
Carriers.
Rates and charges.
Change in rates.
Petition, §23-4-633.
Continuing care providers.
Enforcement of chapter, §23-93-104.
Insurance.
Holding companies.
Acts or determinations of commissioner, §23-63-519.

MANDAMUS —Cont'd
Public utilities.
Rates and charges.
Change in rates.
Petition, §23-4-417.
Railroads.
Discrimination.
Enforcement of act, §23-4-719.
Savings and loan associations.
Enforcement of chapter by mandamus, §23-37-212.
Securities regulation.
Commissioner.
Enforcement of act by mandamus, §23-42-209.

MANUFACTURERS.
Recreational vehicle franchises, §§23-112-1001 to 23-112-1023.

MARINE INSURANCE.
Defined, §23-62-107.

MASTECTOMIES.
Health insurance.
Required coverage, §23-99-405.

MATERNITY.
Health insurance.
Obstetrical and gynecological services.
Required coverage, §23-99-406.
Required coverage, §23-99-404.

MEDIATION.
Recreational vehicle franchises.
Demand before bringing suit, §23-112-1022.

MEDICAL INSURANCE.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.

MEDICALLY NECESSARY FOODS.
Children with phenylketonuria.
Definitions, §23-79-701.
Health insurance coverage, §23-79-703.
Income tax credit for family of child, §23-79-702.

MEDICAL MALPRACTICE.
Insurance rates and charges generally, §§23-67-501 to 23-67-510.

MEDICAL RECORDS.
Health maintenance organizations.
Confidentiality of medical information, §23-76-129.

MEDICARE.
Defined, §23-79-403.

MEDICARE —Cont'd
Supplement insurance policies, §§23-79-401 to 23-79-410.

MEDICARE SUPPLEMENT INSURANCE, §§23-79-401 to 23-79-410.
Administrative procedures.
Regulations adopted pursuant to act, §23-79-409.
Advertising.
Filing requirements, §23-79-408.
Applicability, §23-79-402.
Applicants.
Defined, §23-79-403.
Certificate forms.
Defined, §23-79-403.
Certificates.
Defined, §23-79-403.
Citation of title, §23-79-401.
Definitions, §23-79-403.
Format, §23-79-406.
Disclosure standards, §23-79-406.
Effective date of coverage, §23-79-404.
Examination.
Notice of free examination, §23-79-407.
Filing requirements for advertising, §23-79-408.
Format.
Defined, §23-79-406.
Issuers.
Defined, §23-79-403.
Loss standard ratios, §23-79-405.
Medicare.
Defined, §23-79-403.
Noncompliance with act, §23-79-410.
Notice of free examination, §23-79-407.
Penalties.
Act noncompliance, §23-79-410.
Policy forms.
Defined, §23-79-403.
Rulemaking authority, §23-79-404.
Applicability of administrative procedures, §23-79-409.
Scope, §23-79-402.
Standards for policy provisions, §23-79-404.
Disclosure standards, §23-79-406.
Loss ratio standards, §23-79-405.
Rulemaking authority, §23-79-404.
Title of act, §23-79-401.

MENTAL ANGUISH.
Telecommunications.
Receiving, transmitting or delivering messages, §23-17-112.

MENTAL HEALTH.
Community mental health centers.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance, §§23-99-501 to 23-99-512.
Applicability, §23-99-509.
Definitions, §23-99-503.
Enforcement, §23-99-511.
Exclusions, §23-99-504.
Exemptions.
Increased costs, §23-99-505.
Group and blanket health insurance.
Minimum benefits, §23-86-113.
Intent of state, §23-99-502.
Medical necessity, §23-99-507.
Out-of-network benefits, §23-99-512.
Parity requirements, §23-99-506.
Policies.
Age requirement, §23-85-131.
Provisions permitted, §23-99-508.
Psychological examiner coverage, §23-79-142.
Required coverage, §§23-99-501 to 23-99-512.
Rules and regulations, §23-99-510.
Short title, §23-99-501.
Insurance.
Health insurance.
Required coverage, §§23-99-501 to 23-99-512.
Rules and regulations.
Health insurance coverage, §23-99-510.
Water power companies.
Eminent domain.
Proceedings against infants and insane persons.
Guardian ad litem appointed, §23-18-406.

MENTAL HEALTH PARITY ACT.
Health insurance required coverage, §§23-99-501 to 23-99-512.

MERGER OR CONSOLIDATION.
Credit unions.
Procedure, §23-35-701.
Electric cooperative corporations, §§23-18-324, 23-18-326.
Farmers' mutual aid associations, §23-73-122.
Fraternal benefit societies, §23-74-305.

MERGER OR CONSOLIDATION —Cont'd
Public utilities.
Approval by regulatory commissions, §23-3-102.
Savings and loan associations.
Power of association, §23-37-705.
Trust companies, §§23-51-150 to 23-51-153.
Application, §23-51-151.
Approval of Commissioner, §23-51-152.
Articles of merger.
Application, §23-51-151.
Authority, §23-51-150.
Dissenters' rights, §23-51-153.
Effective date, §23-51-152.
Purchase of assets of another trust company, §23-51-154.

MINORITIES.
Lotteries.
Participation by minority-owned businesses, §23-115-401.

MONEY LAUNDERING.
Money services, reports of licensees, §23-55-606.

MONEY TRANSMITTERS, §§23-55-101 to 23-55-1006.
Administration of provisions, §23-55-104.
Administrative proceedings.
Conformity with administrative procedure act, §23-55-901.
Hearings, §23-55-902.
Applicability of provisions.
Exclusions, §23-55-103.
Uniform application, §23-55-1001.
Authorized delegates, §§23-55-501, 23-55-502.
Lists to be sent to commissioner, §23-55-603.
Revocation or suspension of license, §§23-55-801, 23-55-802.
Cease and desist orders, §23-55-803.
Administrative hearings, §§23-55-901, 23-55-902.
Unlicensed activities, §23-55-807.
Change of control, §23-55-604.
Civil penalties, §23-55-805.
Confidentiality of information filed with commissioner, §23-55-607.
Consent orders, §23-55-804.
Construction of provisions.
Severability, §23-55-1002.
Uniform application and construction, §23-55-1001.
Contracts with authorized delegates, §23-55-502.

MONEY TRANSMITTERS —Cont'd
Cooperation with other regulators for enforcement, §23-55-602.
Criminal penalties, §23-55-806.
Currency exchange licenses, §§23-55-401 to 23-55-404.
Application, §23-55-402.
Denial, §23-55-403.
Administrative hearings, §23-55-902.
Expiration, §§23-55-403, 23-55-1006.
Issuance, §23-55-403.
Nontransferable or assignable, §23-55-401.
Notice of approval, §23-55-403.
Renewal, §§23-55-403, 23-55-404.
Required, §23-55-401.
Revocation or suspension of license, §§23-55-403, 23-55-801.
Administrative hearings, §§23-55-901, 23-55-902.
Surrender, §23-55-403.
Term of license, §23-55-1006.
Unlicensed activities, §23-55-807.
Definitions, §23-55-102.
Disclosure requirements, §23-55-608.
Effective date of provisions, §23-55-1003.
Examination of licensee, §23-55-601.
Exclusion from provisions, §23-55-103.
Investigation of license applicant.
Currency exchange licenses, §23-55-403.
Money transmission license, §23-55-205.
Investigation of licensee, §23-55-601.
Investments, §§23-55-701, 23-55-702.
Money laundering reports, §23-55-606.
Money transmission licenses, §§23-55-201 to 23-55-207.
Application, §23-55-202.
Denial, §23-55-205.
Administrative hearings, §23-55-902.
Expiration, §§23-55-205, 23-55-1006.
Issuance, §23-55-205.
Net worth requirements, §23-55-207.
Nontransferable or assignable, §23-55-201.
Notice of approval, §23-55-205.
Renewal, §§23-55-205, 23-55-206.
Required, §23-55-201.
Revocation or suspension of license, §§23-55-205, 23-55-801.
Administrative hearings, §§23-55-901, 23-55-902.
Security and surety bond of applicant, §23-55-204.

MONEY TRANSMITTERS —Cont'd
Money transmission licenses —Cont'd
Surrender, §23-55-205.
Term of license, §23-55-1006.
Unlicensed activities, §23-55-807.
Net worth of licensees, §23-55-207.
Notice of change of control, §23-55-604.
Permissible investments, §§23-55-701, 23-55-702.
Receivership, §23-55-808.
Records to be kept by licensees, §23-55-605.
Reports of licensees, §23-55-603.
Confidentiality of information filed with commissioner, §23-55-607.
Money laundering reports, §23-55-606.
Revocation or suspension of license, §23-55-801.
Administrative hearings, §§23-55-901, 23-55-902.
Authorized delegates, §23-55-802.
Rule promulgation, §23-55-104.
Savings clause, §23-55-1005.
Scope of authority of delegate, §§23-55-501, 23-55-502.
Severability of provisions, §23-55-1002.
Title of act, §23-55-101.
Transitional provisions, §23-55-1005.
Unlicensed activities, §23-55-807.
Violations.
Administrative hearings, §§23-55-901, 23-55-902.
Cease and desist orders, §23-55-803.
Civil penalties, §23-55-805.
Consent orders, §23-55-804.
Criminal penalties, §23-55-806.
Receivership, §23-55-808.
Unlicensed activities, §23-55-807.

MONOPOLIES AND RESTRAINT OF TRADE.
Railroads.
Control of parallel or competing line.
Contracts for acquisition void, §23-11-311.
Prohibited, §23-11-311.

MOON WALKS.
Insurance for amusements, §§23-89-501 to 23-89-518.

MORTGAGE BANKERS, BROKERS AND SERVICERS, §§23-39-501 to 23-39-518.
Accounting.
Discipline of licensees, §23-39-514.
Advance fee loan brokers.
Actions, §23-39-405.

MORTGAGE BANKERS, BROKERS AND SERVICERS —Cont'd
Advance fee loan brokers —Cont'd
Attorneys' fees.
Action for violation of subchapter, §23-39-405.
Criminal law and procedure.
Violation of subchapter, §23-39-405.
Definitions, §23-39-401.
Injunctions.
Violation of subchapter, §23-39-405.
Limitation of actions.
Action for violation of subchapter, §23-39-405.
Loan brokers principal.
Liability, §23-39-403.
Nonexclusive remedy, §23-39-402.
Penalties for violation of subchapter, §23-39-405.
Principals.
Liability, §23-39-403.
Prohibited acts.
Advance fees, §23-39-404.
Deceptive practices, §23-39-404.
Prohibition generally, §§23-39-401 to 23-39-405.
Remedies generally, §23-39-402.
Violations of subchapter, §23-39-405.
Advertising.
Prohibited activities, §23-39-513.
Application for licensure, §23-39-505.
Cancellation of license or application, §23-39-514.
Renewal, §23-39-506.
Branch mangers.
Required to operate branch office, designation, change, notice, §23-39-508.
Branch office.
Physical address, §23-39-509.
Separate license from principal office, §23-39-505.
Cancellation of license or application, §23-39-514.
Cease and desist orders, §23-39-514.
Cessation of business.
Notice, §23-39-509.
Change of location of office where files maintained.
Notice, failure to give, fine, §23-39-509.
Civil penalties, §23-39-514.
Commissions, fees, compensation.
Prohibited activities, §23-39-513.
Consumer claims.
Priority in recovering on bond, §23-39-505.

MORTGAGE BANKERS, BROKERS AND SERVICERS —Cont'd
Contempt.
Disciplinary proceedings, §23-39-514.
Continuing education, §23-39-507.
Cooperation with other regulatory agencies, §23-39-518.
Correcting amendment to information filed.
Duty to file, fine for failure, §23-39-511.
Crimes and criminal penalty, §23-39-516.
Declaratory judgments.
Discipline of licensees, §23-39-514.
Definitions, §23-39-502.
Denial, suspension, revocation or refusal to issue license, §23-39-514.
Discipline of licensee, §23-39-514.
Disgorgement.
Discipline of licensees, §23-39-514.
Dishonest or unethical practices, §23-39-513.
Duties of licensees, §23-39-510.
Escrow or trust account.
Duty to maintain separate account, §23-39-511.
Failure to make timely payments, §23-39-513.
Examination of business, §23-39-514.
Exempt persons from license requirement, §23-39-502.
Experience requirements, §23-39-505.
Fair mortgage lending act.
Title of act, §23-39-501.
False promise, §23-39-513.
Filing fee, §23-39-505.
Financial statements.
Applicant for license, filing, §23-39-505.
Renewal of license, §23-39-506.
Hazard, homeowners or flood insurance.
Placing on mortgaged property.
When prohibited, §23-39-513.
Unearned premiums.
Refunding to borrower, §23-39-513.
Identity and background information, §23-39-505.
Injunctions.
Discipline of licensees, §23-39-514.
Investigation or examination of loans or business, §23-39-514.
License required, §23-39-503.
Cancellation of license or application, §23-39-514.

MORTGAGE BANKERS, BROKERS AND SERVICERS —Cont'd
License required —Cont'd
Limited license.
Commissioner approval, §23-39-505.
Renewal process, §23-39-506.
Limited license.
Commissioner approval, §23-39-505.
List of applicants for license.
Securities commissioner to keep, §23-39-511.
List of loan officers employed.
Banker or broker to maintain, §23-39-503.
Managing principal.
Required to operate business, designation, change, notice, §23-39-508.
Misrepresentation or concealment of material fact, §23-39-513.
Notice of change in managing principal or branch manager, §23-39-508.
Notice that loan officer's employment terminated.
Requirement, failure to give fine, §23-39-503.
Prepayment penalty, §23-39-513.
Principal office.
Physical address for principal place of business, §23-39-509.
Required to maintain, §23-39-509.
Separate license from branch, §23-39-505.
Prohibited activities, §23-39-513.
Crimes and criminal penalty, §23-39-516.
Public inspection of records, §23-39-512.
Qualifications for licensure, §23-39-505.
Real estate appraisals.
Prohibited activities, §23-39-513.
Records, §23-39-509.
Public inspection, §23-39-512.
Refinancing mortgage.
Charging addition fees and points, §23-39-513.
Renewal of license.
Continuing education, §23-39-507.
Fee, §23-39-506.
Reports.
Annual report of activity.
Renewal, §23-39-506.
Quarterly reports.
Licensees' duties, §23-39-510.
Review of order of securities commissioner, §23-39-515.

MORTGAGE BANKERS, BROKERS AND SERVICERS —Cont'd
Roster of names and places of businesses.
Securities commissioner to keep, §23-39-511.
Rules, promulgation by securities commissioner, §23-39-504.
Satisfaction or release.
Refusal to issue, §23-39-513.
Subpoenas.
Investigation or examination of loans or business, §23-39-514.
Summary postponement or suspension of license.
Pending out come of disciplinary proceeding, §23-39-514.
Surety bond, §23-39-505.
Surrender of license, §23-39-505.
Termination of loan officer's license.
Termination of employment with banker or broker, §23-39-503.
Transfer of license, §23-39-506.
Unique identifier, §23-39-510.
Defined, §23-39-502.
Unlawful to act without license, §23-39-503.
Withdrawal of license application, §23-39-505.

MORTGAGES AND DEEDS OF TRUST.
Abusive lending.
High-cost home loans.
Home loan protection act, §§23-53-101 to 23-53-106.
Actions.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Advance payments.
Home loan protection act.
Prohibition, §23-53-104.
Arbitration.
Home loan protection act.
High-cost home loans.
Mandatory arbitration clause, prohibition, §23-53-104.
Attorneys' fees.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Balloon payment.
Home loan protection act.
Prohibition, §23-53-104.
Bankers, brokers and servicers.
Licensing and regulation generally, §§23-39-501 to 23-39-518.

MORTGAGES AND DEEDS OF TRUST —Cont'd
Banks.
Casualty insurance.
Replacement cost coverage only, §23-47-510.
Sale of certain mortgage loans, §23-47-506.
Call provision.
Home loan protection act.
Prohibition, §23-53-104.
Casualty insurance.
Bank mortgage loans.
Replacement cost coverage only, §23-47-510.
Financial institution requirements, §23-32-206.
Costs.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Damages.
Home loan protection act.
High-cost home loans.
Liability for violations, §23-53-106.
Definitions.
Reverse mortgage, §23-54-103.
Flipping, prohibition.
Home loan protection act, §23-53-104.
Foreclosure.
Home loan protection act.
High-cost home loans.
Asserting violation by borrower in default, §23-53-105.
High-cost home loans, §§23-53-101 to 23-53-106.
Advance payments, prohibition, §23-53-104.
Assignees, liability, §23-53-105.
Attempt to avoid act, §23-53-105.
Balloon payment, prohibition, §23-53-104.
Call provision, prohibition, §23-53-104.
Corrections, unintended violations, §23-53-106.
Counseling, lending without, §23-53-104.
Default, recommending, §23-53-104.
Definitions, §23-53-103.
Flipping, §23-53-104.
Enforcement of claims, §§23-53-105, 23-53-106.
Fee for transmitting balance due, prohibition, §23-53-104.
Flipping, prohibition, §23-53-104.

MORTGAGES AND DEEDS OF TRUST —Cont'd
High-cost home loans —Cont'd
Foreclosure, asserting violation, §23-53-105.
Home improvements contracts.
Paying contractor from proceeds of loan, §23-53-104.
Insurance debt collection agreements, prohibition, §23-53-104.
Interest rate increase after default, prohibition, §23-53-104.
Legislative intent, §23-53-102.
Liability for violations, §23-53-106.
Mandatory arbitration clause, prohibition, §23-53-104.
Modification or deferral fees, prohibition, §23-53-104.
Negative amortization, prohibition, §23-53-104.
Prepayment fees or penalties, prohibition, §23-53-104.
Preservation of claims, §23-53-105.
Prohibited acts and practices, §23-53-104.
Purchasers of loans, liability, §23-53-105.
Repayment ability, lending without regard to, §23-53-104.
Rescission for violations, §23-53-106.
Subterfuge, §23-53-105.
Title of act, §23-53-101.
Unconscionable or deceptive act, violations, §23-53-106.
Home loan protection act.
High cost home loans, §§23-53-101 to 23-53-106.
Insurance.
Investments, §§23-63-826, 23-63-827.
Liens.
Protection as casualty insurance, §23-62-105.
Reverse mortgages, §23-54-107.
Points and fees.
High cost home loans.
Home loan protection act, §§23-53-101 to 23-53-106.
Prepayment fees or penalties.
Home loan protection act.
High-cost home loans, prohibition, §23-53-104.
Mortgage bankers, brokers and servicers, restrictions, §23-39-513.
Reverse mortgages, §§23-54-101 to 23-54-109.
Applicability of act, §23-54-102.
Application for loan.
Disclosures required, §23-54-106.

MORTGAGES AND DEEDS OF TRUST —Cont'd
Reverse mortgages —Cont'd
Citation of act, §23-54-101.
Default, §23-54-108.
Remedies, §23-54-109.
Defined, §23-54-103.
Interest or other fees.
Disclosure, §23-54-104.
Lien, §23-54-107.
Proceeds of loan.
Treatment of, §23-54-105.
Provisions of, §23-54-104.
Remedies, §23-54-109.
Title of act, §23-54-101.
Rural telecommunications cooperatives.
Power to mortgage property, §23-17-231.
Recordation, §23-17-232.
Sale of certain mortgage loans, §23-32-204.

MOTOR CARRIERS.
Alcoholic beverages.
Operation while consuming or under influence of, §23-13-258.
Appeals.
Complaints against carriers.
Orders of state highway and transportation department, §23-13-308.
Orders of state highway and transportation department, §23-13-211.
Filing fees, §23-13-215.
Notice, §23-13-212.
Stay of operating authority pending appeal, §23-13-213.
Transcript, §23-13-214.
Arrest.
Enforcement officers, §23-13-217.
Bills of lading, §23-13-252.
Bonds, surety.
Employees of carriers generally, §§23-16-201 to 23-16-207.
Forfeited bonds.
Disposition, §23-13-264.
Interstate commerce.
Requirement, §23-13-228.
Protection of public, §23-13-227.
Brokers.
Licenses, §23-13-230.
Certificates of public convenience and necessity.
Amendment, §23-13-233.

MOTOR CARRIERS —Cont'd
Certificates of public convenience and necessity —Cont'd
Application, §23-13-219.
Fees, §23-13-219.
Bonds, surety.
Required, §23-13-227.
Conditions, §23-13-221.
Effective date, §23-13-231.
Fees.
Transfer, §23-13-232.
Hearings, §23-13-220.
Issuance, §23-13-220.
Operation without.
Penalties, §23-13-234.
Permits.
Dual operation under certificate and permit prohibited, §23-13-226.
Required, §23-13-218.
Revocation, §23-13-233.
Complaints against carriers, §23-13-307.
Suspension, §23-13-233.
Terms, §23-13-221.
Transfers, §23-13-232.
Common carriers.
Advantages.
Unreasonable advantages prohibited, §23-13-237.
Duties.
Generally, §23-13-236.
Preferences.
Unreasonable preferences prohibited, §23-13-237.
Provisions cumulative, §23-13-243.
Rates and charges.
Collection, §23-13-251.
Complaints, §23-13-238.
State highway and transportation department.
Determination by, §23-13-239.
Hearings, §23-13-241.
Joint rates and charges.
Establishment and division, §23-13-240.
Just and reasonable, §§23-13-236, 23-13-237.
Factors, §23-13-242.
Tariffs, §23-13-244.
Complaints against carriers.
Contract carriers.
Contents, §23-13-248.
Definitions, §23-13-301.
"Commission," §23-13-301.
"Commissioner," §23-13-301.
"Motor vehicle," §23-13-301.

MOTOR CARRIERS —Cont'd
Complaints against carriers —Cont'd
Definitions —Cont'd
"Person," §23-13-301.
Rates and charges.
Common carriers, §23-13-238.
State highway and transportation department.
Determination by, §23-13-239.
Revocation of license, permit or certificate, §23-13-307.
Service of process, §23-13-304.
State highway and transportation department.
Commencement of action before department, §23-13-303.
Contract carriers.
Contents, §23-13-248.
Definition of "commission," §23-13-301.
Duties generally, §23-13-208.
Hearing.
Time and place, §23-13-305.
Orders.
Enforcement, §23-13-309.
Time for taking effect, §23-13-306.
Powers as to witnesses and records, §23-13-302.
Rates and charges.
Common carriers.
Action by department on, §23-13-239.
Subpoenas, §23-13-302.
Enforcement, §23-13-309.
Witnesses.
Payment of witness fees, §23-13-310.
Powers of state highway and transportation department, §23-13-302.
Subpoenas, §23-13-302.
Enforcement, §23-13-309.
Contract carriers.
Contracts, §23-13-225.
Permits.
Required, §23-13-222.
Rates and charges.
Schedules.
Adherence to schedule required, §23-13-246.
Establishment by state highway and transportation department, §23-13-250.
Filing, posting and publishing, §23-13-245.
Hearing, §23-13-249.
Notice of proposed changes, §23-13-247.
Required, §23-13-245.

MOTOR CARRIERS —Cont'd
Contract carriers —Cont'd
Rates and charges —Cont'd
Schedules —Cont'd
Suspension proceedings, §23-13-249.
Controlled substances.
Operation while in possession of, consuming or under influence of, §23-13-258.
Definitions, §23-13-204.
Complaints against carriers.
"Commission," §23-13-301.
"Commissioner," §23-13-301.
"Motor vehicle," §23-13-301.
"Person," §23-13-301.
Motor carrier act of 1955.
Bona fide taxi cab service, §23-13-206.
Drugs.
Operation under influence of controlled substances, §23-13-258.
Drunkenness.
Prohibited act, §23-13-258.
Employees of carriers.
Bonds, surety of employees of carriers, §§23-16-201 to 23-16-207.
Fees.
Annual fee collected from carriers, §§23-16-101 to 23-16-106.
Annual fees charged carriers, §23-13-235.
Certificates of public convenience and necessity.
Application fee, §23-13-219.
Transfer, §23-13-232.
Exempt carriers.
Insurance filing fee, §23-13-265.
Permits.
Application fees, §23-13-223.
Transfer, §23-13-232.
Registration of carriers engaged in interstate commerce, §23-13-604.
Temporary authority, §23-13-229.
Hearings.
Certificates of public convenience and necessity, §23-13-220.
Common carriers.
Rates and charges, §23-13-241.
Permits.
Prerequisite to issuance, §23-13-224.
State highway and transportation department, §23-13-210.
Certificates of public convenience and necessity, §23-13-220.
Complaints against carriers.
Time and place of hearing, §23-13-305.

MOTOR CARRIERS —Cont'd
Hearings —Cont'd
State highway and transportation department —Cont'd
Notice, §23-13-210.
Service, §23-13-216.
Permits.
Prerequisite to issuance, §23-13-224.
Identification of vehicles, §23-13-256.
Injunctions.
State highway and transportation department.
Jurisdiction.
Mandatory injunction that agency take jurisdiction, §23-13-209.
Violation of subchapter, §23-13-261.
Inspection of documents, §23-13-217.
Inspections.
State highway and transportation department, §23-13-102.
Insurance.
Leased motor vehicles.
Cancellation or termination of insurance policies on.
Notice, §23-13-104.
Uninsured motorist liability insurance.
General provisions, §§23-16-301 to 23-16-304.
Interstate commerce.
Motor carrier act of 1955 not to affect, §23-13-205.
Surety requirement, §23-13-228.
Jurisdiction.
State highway and transportation department.
Injunctions.
Mandatory injunction that agency take jurisdiction, §23-13-209.
Violations of subchapter, §23-13-260.
Leases.
Insurance policies on leased motor vehicles.
Notice of cancellation or termination, §23-13-104.
Lessor to unauthorized person deemed motor carrier, §23-13-259.
Licenses.
Amendment, §23-13-233.
Brokers, §23-13-230.
Effective date, §23-13-231.
Operation without.
Penalty, §23-13-234.
Revocation, §23-13-233.
Complaints against carriers, §23-13-307.
Suspension, §23-13-233.
Transfers, §23-13-232.

MOTOR CARRIERS —Cont'd
Liens.
Fines and penalties, §23-13-263.
Motor carrier act of 1955.
Applicability of subchapter, §23-13-204.
Citation of act.
Short title, §23-13-201.
Definitions, §23-13-203.
Bona fide taxi cab service, §23-13-206.
Exemptions, §23-13-206.
Documents required to be in possession of exempt carrier, §23-13-265.
General provisions, §§23-13-201 to 23-13-265.
Interstate commerce.
Unaffected by act, §23-13-205.
Legislative declaration, §23-13-202.
Purpose of act, §23-13-202.
Title of act.
Short title, §23-13-201.
Municipal corporations.
Taxation.
Prohibited, §23-13-103.
Notice.
Appeals.
State highway and transportation department.
Orders of department, §23-13-212.
Hearings.
State highway and transportation department, §23-13-210.
Insurance policies on leased motor vehicles.
Notice of cancellation or termination, §23-13-104.
Out of service, placing vehicle and operator.
Powers of enforcement officers, §23-13-217.
Penalties.
Action to recover, §23-13-262.
Disposition, §23-13-264.
Lien for, §23-13-263.
Registration of carriers engaged in interstate commerce.
Fines, §23-13-605.
Unlawful operation generally, §§23-13-234, 23-13-257.
Permits.
Amendment, §23-13-233.
Applications, §23-13-223.
Fees, §23-13-223.
Bonds, surety.
Required, §23-13-227.

MOTOR CARRIERS —Cont'd
Permits —Cont'd
Certificates of public convenience and necessity.
Dual operation under certificate and permit prohibited, §23-13-226.
Conditions, §23-13-225.
Effective date, §23-13-231.
Fees.
Application fees, §23-13-223.
Transfer, §23-13-232.
Hearings.
Prerequisite to issuance, §23-13-224.
Issuance, §23-13-224.
Operation without.
Penalty, §23-13-234.
Required.
Contract carrier, §23-13-222.
Revocation, §23-13-233.
Complaints against carriers, §23-13-307.
Suspension, §23-13-233.
Terms, §23-13-225.
Transfer, §23-13-232.
Poultry.
Motor carrier act of 1955.
Exemptions, §23-13-206.
Documents required to be in possession of exempt carrier, §23-13-265.
Railroad employees.
Safe transportation by contract carriers, §§23-16-501 to 23-16-511.
Rates and charges.
Common carriers, §23-13-244.
Collection, §23-13-251.
Hearings, §23-13-241.
Joint rates and charges.
Establishment and division, §23-13-240.
Just and reasonable, §§23-13-236, 23-13-237.
Factor, §23-13-242.
Provisions cumulative, §23-13-243.
Complaints against carriers.
Common carriers, §23-13-238.
State highway and transportation department.
Determination by, §23-13-239.
Contract carriers.
Schedules.
Adherence to schedule required, §23-13-246.
Establishment by state highway and transportation department, §23-13-250.
Filing, posting and publishing, §23-13-245.

MOTOR CARRIERS —Cont'd
Rates and charges —Cont'd
Contract carriers —Cont'd
Schedules —Cont'd
Hearing, §23-13-249.
Notice of proposed changes, §23-13-247.
Required, §23-13-245.
Suspension proceedings, §23-13-249.
Just and reasonable, §§23-13-236, 23-13-237.
Receipts, §23-13-252.
Registration.
Carriers engaged in interstate commerce, §§23-13-601 to 23-13-605.
Base state registration requirement, §23-13-602.
Definitions, §23-13-601.
Fees, §23-13-604.
Implementation and administration of act, §23-13-603.
Penalties for violations, §23-13-605.
Powers and duties of director, §23-13-603.
Violation of provisions, §23-13-605.
Fee, §23-13-235.
Right of entry.
State highway and transportation department, §23-13-255.
Rules and regulations.
State highway and transportation department.
Protection of public, §23-13-230.
Safety inspections.
Powers of enforcement officers, §23-13-217.
Service of process.
Agent for service, §23-13-216.
Complaints against carriers, §23-13-304.
State highway and transportation department.
Appeals.
Orders of department, §23-13-211.
Filing fees, §23-13-215.
Notice, §23-13-212.
Stay of operating authority pending appeal, §23-13-213.
Transcript, §23-13-214.
Arrest.
Enforcement officers.
Authority, §23-13-217.
Complaints against carriers.
Commencement of action before agency, §23-13-303.

MOTOR CARRIERS —Cont'd
State highway and transportation department —Cont'd
Complaints against carriers —Cont'd
Contract carriers.
Contents, §23-13-248.
Definition of "commission," §23-13-301.
Duties of department generally, §23-13-208.
Hearing.
Time and place, §23-13-305.
Orders.
Enforcement, §23-13-309.
Time for taking effect, §23-13-306.
Powers as to witnesses and records, §23-13-302.
Subpoenas, §23-13-302.
Enforcement, §23-13-309.
Duties.
Generally, §23-13-208.
Enforcement officers.
Authority, §23-13-217.
Designation, §23-13-217.
Powers, §23-13-217.
Hearings, §23-13-210.
Certificates of public convenience and necessity, §23-13-220.
Complaints against carriers.
Time and place of hearing, §23-13-305.
Notice.
Service, §23-13-216.
Permits.
Prerequisite to issuance, §23-13-224.
Injunctions.
Mandatory injunction requiring department to take jurisdiction, §23-13-209.
Inspection of licensee, §23-13-102.
Jurisdiction.
Injunctions.
Mandatory injunction that department take jurisdiction, §23-13-209.
Notice.
Hearings, §23-13-210.
Regulation by department, §23-13-207.
Right of entry, §23-13-255.
Rules and regulations.
Protection of public, §23-13-230.
Subpoenas, §23-13-210.
Complaints against carriers, §§23-13-302, 23-13-309.

MOTOR CARRIERS —Cont'd
Subpoenas.
State highway and transportation department, §23-13-210.
Complaints against carriers, §§23-13-302, 23-13-309.
Taxation.
Municipalities may not tax, §23-13-103.
Taxicabs.
Motor carrier act of 1955.
Exemptions, §23-13-206.
Bona fide taxi cab service.
Defined, §23-13-206.
Documents required to be in possession of exempt carrier, §23-13-265.
Temporary authority.
Extension prohibited, §23-13-229.
Fees, §23-13-229.
When authorized, §23-13-229.
Vehicles.
Identification, §23-13-256.
Violation of subchapter.
Action to recover, §23-13-262.
Injunctions, §23-13-261.
Jurisdiction of cases, §23-13-260.
Penalties, §23-13-257.

MOTORCYCLES.
Events.
Special motorcycle events, §§23-112-801 to 23-112-806.
Sales.
Special motorcycle events, §§23-112-801 to 23-112-806.
Special motorcycle events, §§23-112-801 to 23-112-806.
Definitions, §23-112-802.
Economic impact.
Determination of significant positive economic impact, §23-112-804.
Presumption of significant positive economic impact, §23-112-806.
Statement of estimated positive economic impact, §23-112-803.
Established and ongoing events, §23-112-806.
Exemptions, §23-112-804.
Legislative findings, §23-112-801.
Out-of-state dealers and manufacturers.
Temporary permits to participate in events, §23-112-805.

MOTORCYCLES —Cont'd
Special motorcycle events —Cont'd
Permits.
Out-of-state dealers and manufacturers.
Temporary permits to participate in events, §23-112-805.
Waiver of relevant market area provisions and rules as to dealers in contiguous counties, §23-112-805.

MOTOR VEHICLE DEALERS.
Appeals.
Chargebacks, protest of, §23-112-313.
Auto auction fees.
Salvage-titled or parts-only titled vehicles, §23-112-614.
Bond.
Application for license accompanied by, §23-112-103.
Compensation for warranty work, §23-112-313.
Contract for sale.
Delivery prior to sale, §23-112-316.
Damage to motor vehicles while in transit.
Delivery to dealer.
Damage after.
Disclosure to consumer, §23-112-706.
Damage prior to.
Computing time, §23-112-704.
Disclosure to consumer, §23-112-705.
Failure to repair, §23-112-703.
Notice, §23-112-702.
When accomplished, §23-112-701.
Indemnification of franchised dealers.
Manufacturer required to indemnify, §23-112-707.
Definitions, §23-112-103.
Recreational vehicle franchise act, §23-112-1003.
Delivery, preparation, warranty obligations.
Manufacturers, distributors, second-stage manufacturers, importers or converters, §23-112-103.
Fees.
Auto auction fees.
Salvage-titled or parts-only titled vehicles, §23-112-614.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.

MOTOR VEHICLE DEALERS —Cont'd
Financing, purchase or sale.
Contract for sale.
Delivery prior to sale, §23-112-316.
Licenses.
Addition of new motor vehicle dealers, §23-112-311.
Appeals.
Chargebacks, protest of, §23-112-313.
Denial, revocation or suspension, §23-112-506.
Applications, §23-112-302.
Denial, §23-112-501.
Fees, §23-112-303.
Bond.
Application accompanied by, §23-112-103.
Brokers.
Acting as broker prohibited, §23-112-406.
Business restructuring, §23-112-304.
Buyer referral services, plans, clubs, etc., §23-112-406.
Change of employer, §23-112-305.
Factory representative and distributor representative, §23-112-305.
Salespersons, §23-112-306.
Definitions, §23-112-103.
Exhaustion of remedies required, §23-112-507.
Expiration, §23-112-307.
Factory representative and distributor representative, §23-112-305.
Franchise, termination, cancellation, etc., §23-112-403.
Hearings, §§23-112-506 to 23-112-509.
Appeals, §23-112-506.
Call for hearing, §23-112-502.
Conduct, §23-112-504.
Decisions, §23-112-505.
Exhaustion of remedies required, §23-112-507.
Location, §23-112-503.
Notice, §23-112-503.
Orders of commission, §23-112-505.
Right to hearing, §23-112-501.
Rules of order or procedure, §23-112-508.
Summons, citation and subpoena, §23-112-509.
Issuance, §23-112-304.
Legislative declaration, §23-112-102.
Manufacturer's product or warranty liability, §23-112-310.
Name changes, §23-112-304.

MOTOR VEHICLE DEALERS —Cont'd
Licenses —Cont'd
Negative equity financing, §23-112-318.
Prohibited acts.
Dealers and salespersons, §23-112-402.
Manufacturers, distributors, etc., §23-112-403.
Reciprocity, §23-112-312.
Records to be maintained.
Applicants for licenses, §23-112-302.
Relocation of new motor vehicle dealer, §23-112-311.
Required, §23-112-301.
Exceptions, §23-112-318.
Revocation or suspension, §23-112-308.
Hearings, §23-112-501.
Monetary penalty in lieu of, §23-112-309.
Term, §23-112-307.
Unfair competition by manufacturer with dealer, §23-112-403.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Violations of provisions, §23-112-314.
Display of license, §23-112-105.
Injunctions, §23-112-104.
Prohibited acts, §§23-112-402, 23-112-403.
Warranty or recall agreements, §23-112-313.
Negative equity financing, §23-112-318.
New motor vehicles.
Delivery prior to sale, §23-112-316.
Motor vehicle event data recorders, §23-112-107.
Notice.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Recreational vehicle franchises, §§23-112-1001 to 23-112-1023.
Recreational vehicle special events, §§23-112-901 to 23-112-905.
Sales.
Contract for sale.
Delivery prior to sale, §23-112-316.
Salvage-titled or parts-only titled vehicles.
Auto auction fees, §23-112-614.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.

MOTOR VEHICLE DEALERS —Cont'd
Special motorcycle events, §§23-112-801 to 23-112-806.
Unlawful practices, §23-112-402.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Contract for sale.
Delivery prior to sale, §23-112-613.
Dealer's license.
Application, §23-112-607.
Issuance of license certificate, §23-112-609.
Display, §23-112-610.
Fees.
Licensed certificate fees, §23-112-608.
Recordkeeping requirements, §23-112-611.
Required, §23-112-606.
Delivery prior to sale, §23-112-613.
Disclosures, §23-112-613.
Printed advertisements, dealer requirements for, §23-112-610.
Service and handling fees, §23-112-617.
Warranties.
Compensation for warranty work, §23-112-313.
Manufacturer's product or warranty liability, §23-112-310.
Warranty or recall agreements, §23-112-313.

MOTOR VEHICLE EVENT DATA RECORDERS, §23-112-107.

MOTOR VEHICLE INSURANCE.
Bodily injury minimum coverage limits, §23-89-403.
Driver other than insured in accident.
Converting limits downward.
Prohibition on stepdowns, §23-89-214.
Commercial lines, §23-79-312.
Extraterritorial provisions.
Liability insurance coverage, §23-89-212.
Commercial lines, §23-79-311.
Liability insurance.
Defrauding secured creditor.
Unauthorized use of proceeds, §23-89-216.
Use of proceeds, notice to insured, §23-89-216.
When policy is considered primary policy, §23-89-215.

MOTOR VEHICLE INSURANCE —Cont'd
Proof-of-insurance card.
Issued to insured, §23-89-213.
Rental vehicles.
Insurance.
Limited license for rental companies, §23-64-202.
Limited license for rental companies, §23-64-202.
Prohibited acts by motor vehicle lessors, §23-112-404.
Safety responsibility.
College graduates.
Premium reduction for, §23-89-210.
Stepdowns.
Prohibited, §23-89-214.
Commercial lines, §23-79-312.
Total loss settlements, §23-89-211.
Underinsured motorists, §23-89-209.
Annual report by insurers, §23-63-1202.
Set-offs or reduction of recovery, §23-89-403.
Uninsured motorists.
Casualty insurance.
Bodily injury coverage, §23-89-403.
Definition of uninsured motorist, §23-89-401.
Insurers' insolvency protection.
Applicability, §23-89-402.
Property damage coverage, §23-89-404.
Subrogation of insurer making payment, §23-89-405.

MOTOR VEHICLES.
Associations, §§23-77-101 to 23-77-109.
Black boxes.
Motor vehicle event data recorders, §23-112-107.
Clubs or associations, §§23-77-101 to 23-77-109.
Data recorders in new motor vehicles, §23-112-107.
Distributors.
Defined, §23-112-103.
Unlawful practices, §23-112-403.
Equipment.
Data recorders in new motor vehicles, §23-112-107.
Railroad employees, safe transportation by contract carriers.
Equipment requirements for vehicles, §23-16-507.
Event data recorders in new motor vehicles, §23-112-107.

MOTOR VEHICLES —Cont'd
Leases.
Lessors.
Unlawful practices, §23-112-404.
Low speed vehicle.
Defined, §23-112-103.
Manufacturers.
Defined, §23-112-103.
Unlawful practices, §23-112-403.
Motor carriers, §§23-13-102 to 23-13-605.
Motor vehicle commission.
Bonds, surety, §23-112-202.
Composition, §23-112-201.
Creation, §23-112-201.
Definitions, §23-112-103.
Employees, §23-112-203.
Enforcement, §23-112-106.
Legislative intent, §23-112-102.
Motor vehicle commission fund.
Disposition, §23-112-205.
Oath of office of members, §23-112-202.
Office, §23-112-203.
Proceedings, §23-112-202.
Rules and regulations, §23-112-204.
Title of chapter.
Short title, §23-112-101.
New motor vehicles.
Motor vehicle event data recorders, §23-112-107.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Passengers.
Insurance.
Coverage for passengers and others not occupying another vehicle, §23-89-204.
Previously owned motor vehicles, §§23-112-601 to 23-112-617.
Recreational vehicle dealers, §§23-112-1001 to 23-112-1023.
Sales.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.

MP3 PLAYERS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

MULTIPLE PARTY ACCOUNTS.
Credit unions, §23-35-504.
Secured and unsecured loans against, §23-35-603.
Savings and loans associations, §23-37-502.

MUNICIPAL ELECTRIC CONSOLIDATED AUTHORITIES.
Construction of major utility facility.
Subject utility facility environmental and economic protection act, §23-18-530.

MUNICIPALITIES.
Direct actions against insurer, §23-79-210.
Greyhound racing.
Racing meets.
Use of revenue derived from additional racing days, §23-111-515.
Insurance.
Direct action against insurer, §23-79-210.
Lotteries.
Local government authority preempted, §23-115-406.
Motor carriers.
Taxation.
Prohibited, §23-13-103.
Motor vehicles.
Motor carriers.
Taxation.
Prohibited, §23-13-103.
Taxation.
Motor carriers.
Prohibited, §23-13-103.
Railroads.
Free carriage for municipalities.
Authorized, §23-4-807.
Land grants in aid of railroads.
Rights of way, §23-12-205.
Rights of way.
Abandoned rights of way.
Process, §23-12-206.
Sale to municipality, §23-12-205.
Transfer of ownership or responsibility, §23-12-207.
Rates and charges.
Public utilities.
Cities and towns divested of authority over rate making, §23-4-201.
Rural telecommunications cooperatives.
General provisions, §§23-17-201 to 23-17-242.
Municipalities defined, §23-17-202.

MUNICIPAL UTILITIES.
Franchises.
Violation of municipal franchise.
Damages, §23-3-116.

MUNICIPAL UTILITIES —Cont'd
Franchises —Cont'd
Violation of municipal franchise —Cont'd
Penalty, §23-3-116.
Rates and charges.
Cities and towns divested of authority over ratemaking, §23-4-201.

MUTUAL ASSESSMENT LIFE AND DISABILITY INSURERS, §§23-72-101 to 23-72-122.
Actions, §23-72-120.
Amendments.
Bylaws, §23-72-110.
Applicability of chapters, §23-72-102.
Applicability of miscellaneous provisions, §23-72-103.
Assessments.
Additional assessments, §23-72-112.
Pro rata assessment plans.
Defined, §23-72-101.
Guidelines for transactions, §23-72-107.
Reclassification and rearrangement of members, §23-72-116.
Special provisions, §23-72-111.
Attachment.
Benefits, §23-72-114.
Benefits.
Adjustments of rates or benefits, §23-72-112.
Attachment, §23-72-114.
Level or stipulated plan insurers, §23-72-113.
Bonds, surety.
Required, §23-72-105.
Bylaws, §23-72-109.
Amendments, §23-72-110.
Filing, §23-72-110.
Certificates of authority.
Refusal or revocation.
Grounds, §23-72-106.
Claims.
Scaling of claims.
Notice to members, §23-72-115.
Conversions.
Merger or bulk reinsurance or conversion, §23-72-119.
Insolvency, §23-72-121.
Insuring powers, §23-72-108.
Level or stipulated rate plans.
Defined, §23-72-101.
Guidelines for transactions, §23-72-107.
Liabilities.
Officers and members not individually liable, §23-72-122.

MUTUAL ASSESSMENT LIFE AND DISABILITY INSURERS —Cont'd
Mergers.
Bulk reinsurance or merger or conversion, §23-72-119.
Minimum requirements, §23-72-104.
New insurers, §23-72-104.
Notice.
Claims.
Scaling of claims, §23-72-115.
Officers.
Liability, §23-72-122.
Other provisions applicable, §23-72-103.
Policies.
Minimum requirements, §23-72-104.
Powers to insure, §23-72-108.
Premiums.
Conversion to level premium plan, §23-72-118.
Pro rata assessment plans.
Defined, §23-72-101.
Guidelines for transactions, §23-72-107.
Reclassification and rearrangement of members, §23-72-116.
Special provisions, §23-72-111.
Provisions exclusive, §23-72-102.
Rates and rating organizations.
Adjustment of rates or benefits, §23-72-112.
Level or stipulated rate plans.
Benefits and payment, §23-72-113.
Defined, §23-72-101.
Reinsurance, §23-72-117.
Bulk reinsurance, §23-72-119.
Reserves.
Required, §23-72-104.
Scope of chapter, §23-72-102.
Service of process.
Actions, §23-72-120.
Solvency, §§23-72-101 to 23-72-122.
Venue.
Actions, §23-72-120.

MUTUAL FUNDS.
Trust companies.
Investments, §23-51-126.

MUTUAL INSURANCE HOLDING COMPANIES, §§23-69-301 to 23-69-323.

N

NAMES.
Banks.
Mergers, conversions or other corporate actions.
Use of old name, §23-48-507.

NAMES —Cont'd
Banks —Cont'd
Misleading use of name or title, §23-50-103.
Reservation and registration of names, §23-48-309.
Restrictions on use of names, §23-32-209.
Building and loan associations.
Restrictions on use, §23-32-209.
Captive insurance companies.
Deceptively similar names, §23-63-1603.
Credit unions.
Improper use of words "credit union," §23-35-801.
Enforcement, §23-35-801.
Restrictions on use, §23-32-209.
Criminal law and procedure.
Banks.
Misleading use, §23-50-103.
Financial institutions.
Unauthorized use of name or title, §23-32-209.
Financial institutions.
Restrictions on use of certain phrases, §23-32-209.
Insurance.
Companies.
Foreign state or country.
Unjustified refusal to permit business because of similar name.
Retaliation, §23-63-103.
Name of insurer, §23-63-203.
Insurance producers.
Assumed names, §23-64-510.
Reciprocal insurers.
Actions.
Name used in suits, §23-70-104.
Stipulated premium insurers.
Use of name, §23-71-106.
Unfair competition and trade practices.
Fictitious groups, §23-66-304.
Insurance companies.
Captive insurance companies.
Deceptively similar names, §23-63-1603.
Rural telecommunications cooperatives.
Prohibition on use of words "telecommunications cooperative" or "telephone cooperative," §23-17-208.
Trust companies.
Registration, §23-51-169.
Restrictions on use, §23-32-209.

NATURAL GAS.
Arkansas clean energy development act, §§23-18-701 to 23-18-703.
Gas utilities extension projects, §§23-3-601 to 23-3-607.

NAVIGATORS.
Health insurance marketplace navigators, guides, certified application counselors.
Licenses, §§23-64-601 to 23-64-614.

NEGLIGENCE.
Telecommunications.
Damages for mental anguish, §23-17-112.

NEWSPAPERS.
Railroads.
Passes.
Issuance in exchange for advertising space, §23-4-806.

NO FAULT INSURANCE.
First party coverage.
Required coverage, §23-89-202.

NONPROFIT CORPORATIONS (1987).
Direct actions against insurer, §23-79-210.
Insurance.
Direct actions against insurer, §23-79-210.

NOTARIES PUBLIC.
Bank officers, §23-48-324.

NOTICE.
Automatic teller machines.
Establishment of machines, §23-48-803.
Banking board.
Applications file, §23-46-403.
Hearings, §23-46-405.
Meetings, §23-46-402.
Banks.
Adverse claims to deposits, §23-47-205.
Automatic teller machines.
Establishment of terminal, §23-48-803.
Branches.
Termination of full service branches, §23-48-705.
Deposits.
Notice of rules, §23-47-201.
Dissolution and liquidation.
Notice of claims, §23-49-109.
Notice of possession by department, §23-49-105.
Notice of safekeeping of safe deposit boxes, §23-49-115.

NOTICE —Cont'd
Banks —Cont'd
Dissolution and liquidation —Cont'd
Possession by department, §23-49-102.
Failure to make report or pay fees, §23-46-510.
Interstate mergers and branching.
Change of control of out-of-state banks, §23-48-910.
Notice of proposed merger, §23-48-905.
Plans of exchange.
Meeting to consider, §23-48-602.
Revocation of trust powers, §23-47-709.
Shareholder meetings.
Notice of annual meeting, §23-48-319.
Stockholder meetings, §23-48-318.
Carriers.
Rates and charges.
Changes in rates, §23-4-620.
Proposed changes, §23-4-635.
CBCT's.
Establishment, §23-48-803.
Continuing care providers.
Disclosure statements.
Deficiencies, §23-93-107.
Licenses.
Disciplinary actions, §23-93-205.
Electric cooperative corporations.
Generation and transmission cooperatives.
Notice of proposed modification of rates, §23-4-1103.
Organizational meeting, §23-18-316.
Rates and charges.
Changes.
Proposed rate changes, §23-4-903.
Fraternal benefit societies.
Consolidations and mergers, §23-74-305.
Domestic societies.
Deficiency or deficiencies, §23-74-606.
Hearings.
Injunctions, liquidation or receivership, §23-74-606.
Examination of societies.
Opportunity to respond to before findings made public, §23-74-604.
Foreign or alien societies.
Licenses.
Suspension, revocation or refusal.
Notice of deficiency, §23-74-607.

NOTICE —Cont'd
Fraternal benefit societies —Cont'd
Publication.
Required notice, §23-74-202.
Greyhound racing.
Franchises to conduct races.
Elections, §23-111-304.
Health insurance marketplace.
Adoption of policies, procedures and rules, §23-61-803.
Health maintenance organizations.
Rules and regulations.
Promulgation, §23-76-125.
Highways.
State highway and transportation department.
Hearings, §23-2-415.
Service, §23-2-405.
Horse racing.
Franchises to conduct horse races.
Elections, §23-110-304.
Continuing horse races in county.
Results of election, §23-110-306.
Racing meets.
Sunday racing.
Notice of election, §23-110-402.
Industrial loan institutions.
Claims against estate of liquidated institution, §23-36-116.
Commissioners taking charge of institution, §23-36-116.
Life settlements.
Notice to insurer, §23-81-811.
Lotteries.
Retailers.
Closure of business by commission, §§23-115-607, 23-115-610.
Withholding from prizes.
Debtors owing money to state, §23-115-1004.
Medicare supplement insurance policies.
Applicant's free examination, §23-79-407.
Money services.
Change of control, §23-55-604.
Currency exchange licenses.
Notice of approval, §23-55-403.
Money transmission licenses.
Notice of approval, §23-55-205.
Mortgage bankers, brokers and servicers.
Cessation of business, §23-39-509.
Change in managing principal or branch manager, §23-39-508.
Change of location of office where files maintained, §23-39-509.
NOTICE —Cont'd
Mortgage bankers, brokers and servicers —Cont'd
Loan officer's employment terminated.
Requirement, failure to give fine, §23-39-503.
Motor carriers.
Insurance policies on leased motor vehicles.
Notice of cancellation or termination, §23-13-104.
Transportation commission.
Appeals.
Orders of commission, §23-13-212.
Hearing, §23-13-210.
Motor vehicle dealers.
Service and handling fees, §23-112-317.
Used motor vehicle dealers, §23-112-617.
Motor vehicle liability insurance.
Unauthorized use of proceeds, notice to insured, §23-89-216.
Portable electronics insurance.
Termination by insurer, §23-88-506.
Property insurance.
Fire loss reporting act.
Notice regarding fire protection, §23-88-404.
Notice prior to expiration of policy, §23-88-105.
Public service commission.
Appeals, §23-2-423.
Hearings, §23-2-415.
Service, §23-2-405.
Public utilities.
Rates and charges.
Change in rates.
Changes allowed without notice, §23-4-403.
Intention to file application for rate change, §23-4-401.
Proposed changes, §23-4-402.
Railroads.
Abandonment of rail lines.
Process, §23-12-206.
Crossings.
Orders of state highway commission, §23-12-304.
Dangerous conditions.
Notice to public, §23-12-103.
Drainage of roadbed.
Notice of violation, §23-12-204.
Fences.
Notice to remove fence for public convenience, §23-12-308.
Livestock.
Killing or injuring.
Notice to be posted, §23-12-908.

NOTICE —Cont'd
Railroads —Cont'd
Stock guards.
Notice to construct, §23-12-412.
Recreational vehicle franchises.
Dealer agreement.
Termination, cancellation, nonrenewal, §23-112-1012.
Sale of business resulting in change of dealer ownership, §23-112-1015.
Risk-based capital act.
Notices to insurers, §23-63-1316.
Health organizations, §23-63-1512.
Risk retention and purchasing groups.
Foreign risk retention groups.
Notice to purchasers, §23-94-205.
Purchasing groups.
Requirements, §23-94-208.
Rural telecommunications cooperatives.
Meetings.
Members meetings, §23-17-217.
Waiver of notice, §23-17-223.
Organizational meeting, §23-17-213.
Securities regulation.
Registration of securities by notification, §23-42-401.
Title insurance.
Notice of availability of closing protection, §§23-103-405, 23-103-413.
Trust companies.
Change of location of principal office, §23-51-172.
Charter application, §23-51-107.
Commissioner's actions.
Notice and opportunity for hearing, §23-51-189.
Dissolution and liquidation.
Notice of claims, §23-49-109.
Notice of possession by department, §23-49-105.
Notice of safekeeping of safe deposit boxes, §23-49-115.
Possession by department, §23-49-102.
Establishment of office, §23-51-173.
Out-of-state offices, §23-51-174.
Out-of-state trust companies.
Establishment or acquisition of office, §23-51-178.
Notice of changes in control, §23-51-183.
Private trust companies.
Revocation of exemption, §23-51-119.
Underinsured motorists.
Rejection of coverage, §23-89-209.

NOTICE —Cont'd
Water power companies.
Eminent domain.
Notice to nonresident landowners, §23-18-406.
Workers' compensation.
Increase in premiums, §23-79-151.

NURSES.
Advanced practice nurses.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

NURSING HOMES.
Long-term care insurance.
General provisions, §§23-97-301 to 23-97-321.

O

OATHS OR AFFIRMATIONS.
Charitable bingo and raffles.
Excise tax.
Filing of report to be made under oath, §23-114-602.
Credit unions.
Officers, §23-35-305.
Highways.
State highway and transportation department.
Administration of oaths, §23-2-406.
Horse racing.
Racing commission.
Oath of office of members, §23-110-201.
Insurance.
Burial associations.
Board.
Oath of office, §23-78-105.
Fees.
Oath at payment, §23-78-111.
Commissioner, §23-61-102.
Lottery commission, §23-115-203.
Motor vehicles.
Motor vehicle commission.
Oath of office of members, §23-112-202.
Public service commission.
Administration of oaths, §23-2-406.
Oath of office, §23-2-101.
Savings and loan associations.
Charter, §23-37-301.
Trust companies.
Commissioner's power to administer, §23-51-190.

OATHS OR AFFIRMATIONS —Cont'd
Trusts and trustees.
Banks as trustees, §23-47-706.

OBSTETRICAL SERVICES.
Health insurance.
Required coverage, §23-99-406.

OCCUPATIONAL THERAPISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance coverage for occupational therapy services, §23-79-157.

OIL AND GAS.
Definitions.
Gas utilities extension projects, §23-3-602.
Gas utilities extension projects.
Certificate.
Conditions and limitations on grant of certificate, §23-3-605.
Defined, §23-3-602.
Denial of certificate, §23-3-607.
Effect, §23-3-607.
Effect, §23-3-603.
Grant of certificate, §23-3-603.
Conditions and limitations, §23-3-605.
Petition for certificate, §23-3-601.
Not considered rate application, §23-3-306.
Petitions not considered rate applications, §23-3-606.
Rate applications.
Petitions for certificates not considered, §23-3-606.
Definitions, §23-3-602.
Legislative declaration, §23-3-601.
Purpose of provisions, §23-3-601.
Rates, §23-3-604.
Petition for certificate not considered rate application, §23-3-306.
Tariffs, §23-3-604.

OPTOMETRISTS.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

ORDERS.
Continuing care providers.
Cease and desist orders.
Enforcement of chapter, §23-93-104.

ORDERS —Cont'd
Highways.
State highway and transportation department.
Actions between private persons and railroad companies.
Orders not controverted, §23-2-427.
Amendment, §23-2-426.
Appeals, §23-2-425.
Burden of proof.
Persons seeking to avoid compliance, §23-2-417.
Compliance with orders.
Burden of proof on persons seeking to avoid compliance, §23-2-417.
Power to compel, §23-1-104.
Required, §23-1-103.
Contracts in violation of orders.
Void, §23-1-112.
Evidence.
Copies as evidence, §23-2-420.
Penalties.
Violations, §23-1-103.
Rescinding, §23-2-426.
Violations.
Penalties, §23-1-103.
Written orders required, §23-2-420.
Railroads.
Crossings.
State highway commission, §23-12-304.
Securities regulation.
Commissioner.
Review of commissioner's orders, §23-42-210.
Rules, forms and orders of commissioner, §23-42-204.

ORTHOTICS.
Health insurance consumer protection.
Coverage required, §23-99-417.

ORTHOTISTS, PROSTHETISTS AND PEDORTHISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

OSTEOPATHS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.

OSTEOPATHS —Cont'd
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

P

PARI-MUTUEL WAGERING.
Greyhound racing, §23-111-508.
Horse racing, §23-110-405.

PARTIES.
Public utilities.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Certification proceedings, §23-18-517.

PATIENT PROTECTION ACT.
Any willing provider law enforcement, §§23-99-801 to 23-99-803.
Generally, §§23-99-201 to 23-99-209.

PAYABLE ON DEATH ACCOUNTS.
Accounts or certificates of deposit in two or more names.
Savings and loan associations, §23-37-502.

PERJURY.
Highways.
State highway and transportation department.
Witnesses, §23-2-413.
Public service commission.
Witnesses, §23-2-413.
Railroads.
Freight.
Damages.
False affidavit as to damage, §23-10-304.
Witnesses.
Public service commission, §23-2-413.
State highway and transportation department, §23-2-413.

PERSONAL IDENTIFYING INFORMATION.
Life settlements.
Confidentiality of insured's identifying information, §23-81-806.

PERSONAL PROPERTY.
Insurance.
Domestic stock and mutual insurers.
Taxation.
Situs of personal property for taxation, §23-69-136.

PERSONAL PROPERTY —Cont'd
Rural telecommunications cooperatives.
Powers, §23-17-205.

PETITIONS.
Electric cooperative corporations.
Rates and charges.
Petition for relief from rate change, §§23-4-904, 23-4-905.
Petition to declare co-op subject to rate case procedures, §23-4-906.
Electric utilities.
Storm recovery securitization financing.
Financing orders, §23-18-903.
Insurance.
Delinquency proceedings.
Report and petition for assessment, §23-68-130.
Lottery commission.
Petition by member upon removal, §23-115-210.
Mortgage bankers, brokers and servicers.
Review of order of securities commissioner, §23-39-515.
Public service commission.
Appeals.
Orders of commission, §23-2-423.
Railroads.
Establishment or discontinuance of railroad service, §§23-12-607 to 23-12-611.
Stopping trains within town limits upon petition, §23-12-606.
Telecommunications.
Change in basic local exchange service rates.
Rural companies, §23-17-412.
Water power companies.
Eminent domain, §23-18-406.

PHARMACISTS AND PHARMACIES.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Prescriptions.
Insurance.
Prescription drug benefits, §23-79-149.
Prescription drug card uniformity, §§23-80-401 to 23-80-409.

PHENYLKETONURIA.
Medically necessary foods and low protein modified food products.
Definitions, §23-79-701.

PHENYLKETONURIA —Cont'd
Medically necessary foods and low protein modified food products —Cont'd
Health insurance coverage, §23-79-703.
Income tax credit, §23-79-702.

PHYSICAL THERAPISTS.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance coverage for physical therapy services, §23-79-157.

PHYSICIAN ASSISTANTS.
Health insurance.
Reimbursement for physician assistant services, §23-79-154.

PHYSICIANS AND SURGEONS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.
Health insurance consumer protection.
Applications of providers.
Credentials of physician, §23-99-411.
Hospital and medical service corporations.
Participating hospitals and physicians, §23-75-110.
Professionals not licensed under Arkansas medical practices act.
Health services performed by.
Entitlement notwithstanding policy provisions, §23-79-114.
Relationship of physician and patient, §23-75-105.

PIPELINES.
Appeals.
Fertilizer.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture.
Orders on applications for authority to transport, §23-15-105.
Arkansas natural gas pipeline safety act of 1971, §§23-15-201 to 23-15-217.

PIPELINES —Cont'd
Carriers.
Pipeline companies deemed common carriers, §23-15-101.
Definitions.
Safety act, §23-15-203.
Eminent domain.
Fertilizer.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture.
Companies operating under provisions, §23-15-105.
Right of pipeline companies, §23-15-101.
Procedure in exercising right, §23-15-101.
Fees.
Safety act.
Inspection fees, §23-15-214.
Fertilizer.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture.
Appeals.
Decision on application for authority to transport, §23-15-105.
Applications for authority to transport, §23-15-105.
Eminent domain.
Power of companies authorized to operate other provisions, §23-15-105.
Rules and regulations, §23-15-105.
Fines.
Civil penalties, §23-15-211.
Foreign corporations.
Domestication required, §23-3-108.
Injunctions.
Safety act.
Violations of provisions, §23-15-212.
Jurisdiction.
Safety act.
Violations of provisions, §23-15-212.
Natural gas pipeline safety act, §§23-15-201 to 23-15-217.
Penalties.
Safety act.
Civil penalty, §23-15-211.
Public service commission.
State highway and transportation department or state highway commission.
Authority transferred, vested and conferred upon public service commission, §23-2-209.

PIPELINES —Cont'd
Rates and charges.
Gas rates.
Purchase from lowest or most advantageous market, §23-15-103.
Rules and regulations.
Fertilizer.
Transportation of ammonia and other substances comprising fertilizer or used in its manufacture, §23-15-105.
Safety act.
Assessments, §23-15-214.
Legislative intent, §23-15-215.
Citation of act.
Short title, §23-15-201.
Confidentiality of information.
Information obtained by commission, §23-15-210.
Definitions, §§23-15-201, 23-15-203.
Fees.
Disposition, §23-15-216.
Inspection fees, §23-15-214.
Injunctions.
Violations of provisions, §23-15-212.
Inspections.
Fees, §23-15-214.
Plans.
Compliance with, §23-15-209.
Filing, §23-15-208.
Power of commission, §23-15-207.
Investigations.
Generally, §23-15-207.
Jurisdiction.
Violations of provisions, §23-15-212.
Legislative declaration, §23-15-202.
Maintenance.
Plans.
Compliance with, §23-15-209.
Filing, §23-15-208.
Penalties.
Civil penalty, §23-15-211.
Disposition, §23-15-216.
Public service commission, §23-15-217.
Confidentiality of information obtained by, §23-15-210.
Definition of "commission," §23-15-203.
Fees, §23-15-214.
Powers, §23-15-204.
Purpose of provisions, §23-15-202.
Records.
Access by commission, §23-15-206.
Maintenance, §23-15-206.
Reports.
Required, §23-15-206.

PIPELINES —Cont'd
Safety act —Cont'd
Standards.
Compliance with, §23-15-209.
Powers of commission, §23-15-204.
Promulgation, §23-15-205.
Waiver, §23-15-209.
Title of act.
Short title, §23-15-201.
Torts.
Liability, §23-15-213.
Service of process.
Foreign corporations, §23-3-108.
Waters and watercourses.
Navigable water crossings.
General provisions, §§23-3-501 to 23-3-513.

PLEADINGS.
Highways.
State highway and transportation department, §23-2-403.

P.O.D. ACCOUNTS.
Accounts or certificates of deposit in two or more names.
Savings and loan associations, §23-37-502.

PODIATRISTS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

POPULAR NAMES AND SHORT TITLES.
Any willing provider law, §§23-99-201 to 23-99-209, 23-99-801 to 23-99-803.
Arkansas health insurance marketplace act, §§23-61-801 to 23-61-807.
Arkansas health insurance marketplace navigator, guide and certified application counselors act, §§23-64-601 to 23-64-614.
Arkansas video service act, §§23-19-201 to 23-19-210.
Bell and whistle act, §23-12-410.
Blue sky law, §§23-42-101 to 23-42-509.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.
Clean energy development act, §§23-18-701 to 23-18-703.

POPULAR NAMES AND SHORT TITLES —Cont'd
Electric utility storm recovery securitization act, §§23-18-901 to 23-18-912.
Fair mortgage lending act, §§23-39-501 to 23-39-518.
Farm credit act, §23-32-201.
Fraudulent insurance acts, §§23-66-501 to 23-66-513.
Gag clauses, §23-99-407.
Genetic nondiscrimination in insurance act, §23-66-320.
Health insurance marketplace act, §§23-61-801 to 23-61-807.
Health insurance marketplace navigator, guide and certified application counselors act, §§23-64-601 to 23-64-614.
Home loan protection act, §§23-53-101 to 23-53-106.
Insurance sales consumer protection act, §§23-66-601 to 23-66-610.
Life insurance nonforfeiture law, §23-81-201.
Lifeline individual verification effort corporation act, §§23-16-401 to 23-16-413.
Life settlements act, §§23-81-801 to 23-81-818.
Link up America, §§23-16-401 to 23-16-413.
Lookout act, §23-12-907.
Lottery act, §§23-115-101 to 23-115-1102.
Mental health parity act, §§23-99-501 to 23-99-512.
Motor carrier act, §§23-13-102 to 23-13-605.
Prepaid funeral services, §§23-40-101 to 23-40-126.
Primary eye care provider act, §§23-99-301 to 23-99-305.
Professional employer recognition act, §§23-92-401 to 23-92-419.
Property and casualty actuarial opinion law, §§23-63-1901 to 23-63-1905.
Protected cell company act, §§23-63-1701 to 23-63-1709.
Recreational vehicle franchise act, §§23-112-1001 to 23-112-1023.
Regulation of electric demand response act, §§23-18-1001 to 23-18-1005.

POPULAR NAMES AND SHORT TITLES —Cont'd
Reverse mortgage protection act, §§23-54-101 to 23-54-109.
Safe transportation of railroad employees by contract carriers, §§23-16-501 to 23-16-511.
Structured settlement protection act, §§23-81-701 to 23-81-707.
Title insurance act, §§23-103-401 to 23-103-417.
Uniform money services act, §§23-55-101 to 23-55-1006.
Universal telephone service act, §§23-17-301 to 23-17-307.
Use of credit information in personal insurance act, §§23-67-401 to 23-67-415.
Valued policy law, §23-88-101.

PORTABLE ELECTRONICS INSURANCE, §§23-88-501 to 23-88-507.
Cancellation policy, §23-88-503.
Changes in terms and conditions, §23-88-506.
Claims process.
Process for filing claim, §23-88-503.
Definitions, §23-88-501.
Disclosure requirements, §23-88-503.
Requirement for sale, §23-88-503.
Termination by insurer, §23-88-506.
Vendors.
Authorization to sell or offer, §23-88-504.
Billing a collecting charges, §23-88-504.
Changes in terms and conditions, §23-88-506.
Defined, §23-88-501.
Licensing.
Application process, §23-88-507.
Contents, §23-88-507.
License fees, §23-88-507.
Limited lines license, §§23-88-502, 23-88-505, 23-88-507.
Schedule of fees, §23-88-507.
Suspension or revocation of license, §23-88-505.
Registry of vendor locations.
Supervising entity to maintain, §23-88-502.
Unlicensed sales by representative and employee, §23-88-504.
Violation of provisions, §23-88-505.

POULTRY.
Motor carriers.
Motor carrier act of 1955.
Exemptions, §23-13-206.
Documents required to be in possession of exempt carrier, §23-13-265.

POWER OF ATTORNEY.
Banks.
Obligation to inquire into limitations upon powers, §23-48-104.
Certificates of deposit.
Agency designation, §§23-47-301 to 23-47-309.
Forms.
Agency designation on certificates of deposit, §23-32-503.
Insurance.
Reciprocal insurers, §23-70-108.
Savings and loan associations.
Savings accounts, §23-37-508.

PREEMPTION.
Lotteries.
Local government authority preempted, §23-115-406.

PREGNANCY.
Health insurance.
Required coverage, §§23-99-404, 23-99-406.

PREPAID FUNERAL SERVICES, §§23-40-101 to 23-40-126.

PREPAID LEGAL INSURANCE, §§23-91-201 to 23-91-227.

PRESCRIPTION DRUG CARD UNIFORMITY, §§23-80-401 to 23-80-409.
Applicability of provisions.
Arrangements not subject to provisions, §23-80-403.
Compliance with provisions, §23-80-407.
Contents of cards, §23-80-404.
Definitions, §23-80-402.
Enforcement of provisions, §23-80-408.
Enrollment of covered persons, §23-80-405.
Insurance commissioner enforcement of provisions, §23-80-408.
Issuance of cards, §23-80-405.
No requirement that plans issue cards, §23-80-406.
Legislative intent, §23-80-401.
No requirement for plans to issue cards, §23-80-406.

PRESCRIPTION DRUG CARD UNIFORMITY —Cont'd
Purpose of provisions, §23-80-401.
Requirement of uniformity, §23-80-404.
Rulemaking to implement, §23-80-409.
Time for compliance with provisions, §23-80-407.

PRESCRIPTION DRUGS.
Cancer.
Insurance coverage for prescription medication, §23-79-147.
Equity in prescription insurance and contraceptive coverage, §§23-79-1101 to 23-79-1104.
Contraceptive coverage, §23-79-1103.
Definitions, §23-79-1102.
Extraordinary surcharges prohibited, §23-79-1104.
Short title, §23-79-1101.
Health insurance.
Equity in prescription insurance and contraceptive coverage, §§23-79-1101 to 23-79-1104.
Contraceptive coverage, §23-79-1103.
Definitions, §23-79-1102.
Extraordinary surcharges prohibited, §23-79-1104.
Short title, §23-79-1101.
Formulary for prescription drugs.
Notice of changes, §23-79-159.
Procedure for exceptions, §23-99-409.
Prescription medication for treatment of cancer, §23-79-147.
Insurance.
Prescription drug benefits, §23-79-149.
Prescription drug card uniformity, §§23-80-401 to 23-80-409.
Uniformity of prescription drug cards, §§23-80-401 to 23-80-409.

PRESUMPTIONS.
Bank branches.
Presumption of suitability for branch location, §23-48-702.
Motorcycles.
Special motorcycle events.
Economic impact, §23-112-806.
Railroads.
Employees.
Liability for injury or death of employee.
Defective equipment.
Presumption of knowledge, §23-12-504.

PRIMARY EYE CARE PROVIDER ACT, §§23-99-301 to 23-99-305.

PRINTING.
Charitable bingo and raffles.
Bingo faces and raffle tickets, §23-114-202.

PRIORITIES.
Banks.
Dissolution and liquidation.
Payment of claims, §23-49-111.
Electric utility storm recovery securitization financing.
Storm recovery property.
Sale, assignment or transfer, §23-18-906.
Lotteries.
Withholding from prizes, debtors owing money to state.
Priority of liens, §23-115-1004.
Motor vehicle liability insurance.
When policy is considered primary policy, §23-89-215.
Trust companies.
Dissolution and liquidation.
Payment of claims, §23-49-111.

PRISONS AND PRISONERS.
Lotteries.
Prisoners ineligible to win, §23-115-402.

PRIVACY.
Insurance.
Consumer protection.
Customer privacy, §23-66-607.

PRIVILEGE TAXES.
Insurance.
Risk retention groups, §23-94-210.

PRIZES.
Charitable bingo and raffles, §23-114-408.

PRODUCTS LIABILITY.
Insurance.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

PROFESSIONAL EMPLOYER ORGANIZATIONS, §§23-92-401 to 23-92-419.
Bond required, §23-92-408.
Employer service assurance organizations, §23-92-415.
Client's rights and duties, §23-92-409.
Coemployment relationships, §23-92-409.

PROFESSIONAL EMPLOYER ORGANIZATIONS —Cont'd
Confidential information, §23-92-413.
Construction of provisions.
Relationship to other laws, §23-92-403.
Controlling persons.
Changes in control, §23-92-406.
Duties, §23-92-405.
Deceptive practices, §23-92-411.
Definitions, §23-92-402.
Employer service assurance organizations.
Affidavit, §23-92-414.
Filing, §23-92-418.
Filing, §23-92-418.
Licenses, §23-92-415.
Permissible activities, §23-92-417.
Prohibited activities, §23-92-416.
Fees, §23-92-407.
Employer service assurance organization affidavit, §23-92-414.
Letter of credit in lieu of bond, §23-92-408.
Liability limitation, §23-92-409.
Licenses.
Employer service assurance organizations, §23-92-415.
Exemptions, §23-92-404.
Fees, §23-92-407.
Information required, §23-92-404.
Issuance, §23-92-410.
Renewal, §23-92-404.
Requirement, §23-92-404.
Revocation or suspension, §23-92-410.
Transfer or assignment, §23-92-406.
Net worth requirements, §23-92-408.
Organization's rights and duties, §23-92-409.
Penalties for violations, §23-92-412.
Prohibited practices, §23-92-411.
Employer service assurance organizations, §23-92-416.
Rulemaking, §23-92-419.
Title of provisions, §23-92-401.

PROFESSIONS AND OCCUPATIONS.
Continuing care providers, §§23-93-101 to 23-93-207.
Money services, §§23-55-101 to 23-55-1006.
Mortgage bankers, brokers and servicers, §§23-39-501 to 23-39-518.

PROPERTY AND CASUALTY INSURANCE.
Actuarial opinion law, §§23-63-1901 to 23-63-1905.
Access to information, §23-63-1905.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Actuarial opinion law —Cont'd
Definitions, §23-63-1902.
Immunity of appointed actuary, §23-63-1904.
Statement of actuarial opinion, §23-63-1903.
Summary of actuarial opinion, §23-63-1903.
Title of chapter, §23-63-1901.
Applicability of insurer's insolvency protection, §23-89-402.
Assigned risk.
Eligibility for automobile liability insurance through automobile liability assigned risk plan, §23-89-307.
Banks.
Mortgage loans.
Replacement cost coverage only, §23-47-510.
Benefits.
Exclusion of benefits, §23-89-205.
Minimums, §23-89-201.
Payments under coverage, §23-89-208.
Reimbursement.
Insurer's rights of reimbursement, §23-89-207.
Bodily injury coverage.
Property damage coverage, §23-89-404.
Required, §23-89-403.
Commercial property and casualty insurance policies.
Minimum standards, §§23-79-301 to 23-79-312.
Coverage.
Bodily injury, §23-89-403.
Property damage, §23-89-404.
Creditor-placed insurance, §§23-101-101 to 23-101-114.
Definitions, §§23-62-104, 23-62-105.
Cancellation of policy, §23-89-301.
Uninsured motor vehicle, §23-89-401.
Eligibility.
Automobile liability insurance through automobile liability assigned risk plan, §23-89-307.
Employee benefit stop-loss insurance, §23-62-111.
Exclusion of benefits, §23-89-205.
Fire loss reporting act.
Annual statement, §23-88-402.
Confidential information, §23-88-403.
Notice regarding fire protection, §23-88-404.
Rulemaking, §23-88-405.
Title of provisions, §23-88-401.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Fire protection impact statement, §23-88-104.
First party coverage.
Required coverage, §23-89-202.
Guaranty, §§23-90-101 to 23-90-123.
Insolvency.
Insolvency protection.
Applicability, §23-89-402.
Insured insolvency does not release liability insurer, §23-89-102.
Insurers.
Annual reports.
Commissioner's relationship, §23-63-1201.
Compilation and review, §23-63-1204.
Contents, §23-63-1202.
Failure to comply with requirement, §23-63-1205.
Due date, §23-63-1203.
General provisions, §§23-63-1201 to 23-63-1205.
Insurance types, §23-63-1202.
Publication, §23-63-1204.
Regulations, §23-63-1201.
Applicability of subchapter, §23-63-1104.
Citation of chapter, §23-63-1101.
Conflicts of laws, §23-63-1104.
Date of required compliance, §23-63-1103.
Definitions, §23-63-1102.
General provisions, §§23-63-1101 to 23-63-1107.
Minimum standards, §23-63-1105.
Notice of relationship with producer, §23-63-1106.
Penalties, §23-63-1107.
Producer's disclosure, §23-63-1106.
Standards generally, §23-63-1105.
Title of subchapter, §23-63-1101.
Violations, §23-63-1107.
Liabilities.
Tort liability.
Retention, §23-89-206.
Material transactions disclosures, §§23-63-1401 to 23-63-1406.
Mortgages and deeds of trust.
Bank mortgage loans.
Replacement cost coverage only, §23-47-510.
Financial institution requirements, §23-32-206.
Notice.
Cancellation of policies, §23-89-304.
Nonrenewal of policies, §23-89-305.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Notice —Cont'd
Proof of mailing, §23-89-306.
Notice prior to expiration of policy, §23-88-105.
Passengers.
Coverage for passengers and other not occupying another vehicle, §23-89-204.
Policies.
Cancellation, §23-89-301.
Grounds, §23-89-303.
No liability or cause of action against persons for information or statements relating to cancellation, §23-89-308.
Proof of mailing of notices, §23-89-306.
Time for notice, §23-89-304.
Commercial property and casualty insurance policies, §§23-79-301 to 23-79-312.
Administrative procedures, §23-79-309.
Appeals, §23-79-309.
Applicability of provisions, §23-79-303.
Claims-made policy.
Defined, §23-79-302.
Construction of provisions, §23-79-304.
Minimum standards, §§23-79-301 to 23-79-312.
Motor vehicle coverage.
Extraterritorial provisions, §23-79-311.
Stepdowns, §23-79-312.
Noncomplying provisions, §23-79-308.
Punitive damages exclusion, §23-79-307.
Purpose, §23-79-301.
Renewal, §23-79-307.
Requirements, §23-79-306.
Rules and regulations, §23-79-310.
Standards, §23-79-307.
Violations, §23-79-305.
Definitions, §23-89-301.
First party coverage.
Required coverage, §23-89-202.
Grounds for cancellation of policy, §23-89-303.
Nonrenewal.
Liability or cause of action, §23-89-308.
Notice, §23-89-305.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Policies —Cont'd
Nonrenewal —Cont'd
Proof of mailing of notices, §23-89-306.
Statement of grounds for nonrenewal, §23-89-305.
Notice prior to expiration, §23-88-105.
Passengers.
Coverage for passengers and others not occupying another vehicle, §23-89-204.
Property and casualty insurance guaranty.
Issuance of new or renewal policies, §23-90-118.
Rejection of coverage, §23-89-203.
Simplification of policies, §§23-80-301 to 23-80-308.
Applicability, §23-80-304.
Citation of act, §23-80-301.
Commissioners' powers, §23-80-305.
Compliance by provision of outline of coverage, §23-80-308.
Compliance with other statutorily required language, §23-80-307.
Minimum standards, §23-80-306.
Policy or policy forms defined, §23-80-303.
Purpose, §23-80-302.
Valued policy law, §23-88-101.
Portable electronics insurance, §§23-88-501 to 23-88-507.
Private passenger automobile liability insurance, §23-89-209.
Property and casualty insurance guaranty, §§23-90-101 to 23-90-123.
Accounts and accounting.
Assessments, §23-90-114.
Advertisement and statement prohibition, §23-90-121.
Advisory association.
Conflicts of interest.
Members entering into contracts, §23-90-110.
Creation, §23-90-106.
Powers and duties, §23-90-108.
Procedures, §23-90-107.
Recommendations and reports, §23-90-109.
Appeals, §23-90-123.
Applicability of chapter, §23-90-104.
Assessments.
Accounting for and repayment of, §23-90-114.
Claims, §23-90-112.
Credit against taxes, §23-90-119.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Property and casualty insurance guaranty —Cont'd
Assessments —Cont'd
Estimation of amount needed to pay claims, §23-90-112.
Failure to pay, §23-90-113.
Taxation.
Credit against taxes, §23-90-119.
Certificates of authority.
Suspension or revocation, §23-90-113.
Citation of chapter, §23-90-101.
Claims.
Applicability of chapter, §23-90-111.
Estimation of amount needed to pay claims, §23-90-112.
Notification of insureds, §23-90-111.
Payment, §23-90-115.
Covered claims, §23-90-115.
Estimation of amount needed to pay claims, §23-90-112.
Right of recovery, §23-90-117.
Construction and interpretation, §23-90-105.
Covered claims, §23-90-111.
Defined, §23-90-103.
Definitions, §23-90-103.
Duties of receiver, §23-90-116.
Estimated amount needed to pay claims, §23-90-112.
Exemptions from act, §23-90-104.
Failure to pay assessment, §23-90-113.
Legislative declaration, §23-90-102.
Liability, §23-90-120.
Liberal construction of chapter, §23-90-105.
Net direct written premiums.
Defined, §23-90-103.
Notice, §23-90-111.
Payment of covered claims, §23-90-115.
Defined, §23-90-103.
Policies.
Issuance of new or renewal policies, §23-90-118.
Purpose of act, §23-90-102.
Receivership.
Duties of receiver, §23-90-116.
Right of recovery, §23-90-117.
Rules and regulations, §23-90-122.
Short title, §23-90-101.
Suspension or revocation of certificate of authority, §23-90-113.
Taxation.
Assessments as credit against taxes, §23-90-119.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Property and casualty insurance guaranty —Cont'd
Title of chapter, §23-90-101.
Proxies.
Domestic stock and mutual insurers, §23-69-122.
Corrupt practices, §23-69-123.
Stockholders, §23-69-122.
Railroads.
Casualty insurance.
Railroad accidents not to be considered in automobile insurance, §23-89-302.
Employees.
Liability for injury or death of employee.
Contracts of indemnity insurance no defense, §23-12-507.
Rates and charges.
Administrative procedures, §23-67-222.
Advisory organizations.
Examinations, §23-67-220.
Filing of advisory documents, §23-67-217.
Licenses, §23-67-214.
Permitted activities, §23-67-216.
Prohibited activities, §23-67-215.
Comparison data.
Compilation by commissioner, §23-67-223.
Credit life and health insurance.
Schedule, §23-87-113.
Criteria for rating, §23-67-209.
Definitions, §23-67-202.
Disapproval of rates, §23-67-213.
Dividends.
Payment, §23-67-204.
Employers' liability insurance, §23-67-219.
Examinations, §23-67-220.
Exemptions from chapter, §23-67-206.
Filing of rates, §23-67-211.
Open to inspection, §23-67-212.
Procedural requirements, §23-67-212.
Time for filing, §23-67-219.
Fire protection impact statement, §23-88-104.
Mutual assessment life and disability insurers.
Adjustment of rates or benefits, §23-72-112.
Level or stipulated rate plans.
Benefits and payment, §23-72-113.
Defined, §23-72-101.

PROPERTY AND CASUALTY INSURANCE —Cont'd
Rates and charges —Cont'd
Noncompetitive market.
Filing of rates, §23-67-211.
Hearings, §23-67-207.
Standards, §23-67-207.
Notice of increase, §23-67-211.
Penalties.
Violations, §23-67-205.
Rating plans, §23-67-210.
Records.
Filing, §23-67-218.
Reports.
Filing, §23-67-218.
Scope of provisions, §23-67-203.
Standards.
Modifications, §23-67-210.
Requirements, §23-67-208.
Workers' compensation, §23-67-219.
Real property investments.
Chattel mortgages, §23-63-827.
Limitations, §23-63-828.
Mortgages, §23-63-826.
Time limit for disposal of real estate, §23-63-829.
Failure to dispose of real estate, §23-63-831.
Receivership.
Holding companies, §23-63-523.
Property and casualty insurance guaranty.
Duties of receiver, §23-90-116.
Reimbursement.
Insurers' rights of reimbursement, §23-89-207.
Rejection of coverage, §23-89-203.
Risk-based capital act, §§23-63-1301 to 23-63-1316.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.
Risk-sharing plans, §§23-95-101 to 23-95-108.
Board, §23-95-103.
Construction and interpretation, §23-95-102.
Governing board, §23-95-103.
Hearings, §23-95-104.
Immunity from liability, §23-95-107.
Information for individuals, §23-95-106.
Intent of chapter, §23-95-101.
Liability, §23-95-107.
Plan for coverage.
Contents, §23-95-105.
Requirement, §23-95-104.
PROPERTY AND CASUALTY INSURANCE —Cont'd
Risk-sharing plans —Cont'd
Purposes of chapter, §23-95-101.
Required plan.
Information about services prescribed in plan, §23-95-106.
Participation by insurer in losses and expenses, §23-95-105.
Requirements, §23-95-105.
Voluntary plan not approved or submitted to commissioner, §23-95-104.
Rules and regulations, §23-95-108.
Voluntary plan.
Information about services prescribed, §23-95-106.
Insurers within state to prepare, §23-95-104.
Participation by insurer in losses and expenses, §23-95-105.
Requirements, §23-95-105.
Submission to commissioner for approval, §23-95-104.
Rural risk underwriting association, §§23-88-301 to 23-88-309.
Appeals, §23-88-309.
Commissioner's powers and duties, §23-88-308.
Governing board, §23-88-304.
Insurer.
Defined, §23-88-302.
Legislative intent, §23-88-301.
Liability of insurer, §23-88-307.
Net direct written premiums.
Defined, §23-88-302.
Person.
Defined, §23-88-302.
Plan of property insurance, §23-88-303.
Promulgation and approval, §23-88-305.
Provisions, §23-88-306.
Simplification of policies, §§23-80-301 to 23-80-308.
Subrogation.
Injured persons subrogated to right of insured, §23-89-101.
Insurer making payment, §23-89-405.
Torts.
Retention of tort liability, §23-89-206.
Uninsured motorists.
Definitions, §23-89-401.
Valued policy law.
Property insurance, total loss by fire or natural disaster, §23-88-101.

PROSECUTING ATTORNEYS.
Railroads.
Freight.
Recovery of penalties.
Fee of prosecuting attorney, §23-10-406.
Headlights.
Candlepower requirements.
Enforcement, §23-12-402.
Recovery of penalties under act, §23-12-805.

PROSTATE CANCER.
Health insurance coverage for prevention and treatment, §§23-79-1301 to 23-79-1303.
Definitions, §23-79-1302.
Legislative findings, §23-79-1301.
Required coverage, §23-79-1303.

PROSTHETIC MEDICAL EQUIPMENT.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include prosthetists, §23-99-203.
Health insurance consumer protection.
Coverage required, §23-99-417.

PROTECTED CELL COMPANY ACT, §§23-63-1701 to 23-63-1709.

PROTECTIVE ORDERS.
Public service commission.
Public records, §23-2-316.
State highway and transportation department.
Public records, §23-2-316.

PSYCHOLOGICAL EXAMINERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

PSYCHOLOGISTS.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

PUBLICATION.
Fraternal benefit societies.
Notices.
Required notices, §23-74-202.
Risk-based capital act.
Total adjusted capital compared to RBC levels.
Prohibited, §23-63-1309.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM.
Lottery commission.
Employees of commission, participation, §23-115-304.

PUBLIC FUNDS.
Arkansas high cost fund.
Telecommunications regulatory reform, §23-17-404.
Arkansas universal service fund.
Telecommunications regulatory reform, §23-17-404.
Health maintenance organizations.
Fiduciary responsibilities of directors and officers, §23-76-111.
Horse racing.
Arkansas racing commission purse and awards funds, §23-110-409.
Industrial loan institutions.
Deposit of funds, §23-36-114.
Insurance.
Companies.
Capital funds required, §23-63-205.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Reciprocal insurers.
Surplus funds required, §23-70-105.
Stipulated premium insurers.
Guaranty fund deposit, §23-71-110.
Insurance department trust fund.
General provisions, §§23-61-701 to 23-61-711.
Investor education fund, §23-42-213.
Motor vehicles.
Motor vehicle commission fund.
Disposition, §23-112-205.
Prepaid funeral benefits.
State insurance department prepaid trust fund, §23-40-107.
Prepaid funeral contracts recovery program fund, §23-40-125.
Safety-net benefit fund.
Health insurance flexibility and accountability, §23-79-1004.
Savings and loan associations.
Expense fund required for mutual association, §23-37-306.
State insurance department prepaid trust fund.
Prepaid funeral benefits, §23-40-107.

PUBLIC FUNDS —Cont'd
Telecommunications.
Arkansas calling plan fund, §23-17-404.
Arkansas high cost fund (AHCF), §23-17-404.
Funding, §23-17-418.
Extension of facilities fund, §23-17-404.

PUBLIC OFFICERS AND EMPLOYEES.
Bank department.
Staff, §23-46-206.
Conflicts of interest, §23-46-207.

PUBLIC PURCHASING AND CONTRACTING.
Lotteries.
Procurements, §23-115-701.
Vendors, §§23-115-501 to 23-115-504.

PUBLIC SERVICE COMMISSION.
Accounts and accounting.
Systems of accounts.
Authority to establish, §23-2-306.
Actions.
Compelling compliance with provisions of act and orders, §23-1-104.
Appeals.
Navigable water crossings.
Generally, §§23-3-511, 23-3-512.
Orders.
Judicial review, §23-2-423.
Effect, §23-2-424.
Appointment of members.
Special commissioners for hearings, §23-2-102.
Arkansas clean energy development act, §§23-18-701 to 23-18-703.
Arkansas renewable energy development act of 2001, §§23-18-601 to 23-18-604.
Assistant general counsel, §23-2-106.
Attorneys at law.
Assistant general counsel, §23-2-106.
Practice of law.
Restrictions on activities of members and employees, §23-2-107.
Bonds, surety, §23-2-101.
Broadband over power enabling act, §§23-18-801 to 23-18-808.
Burden of proof.
Person seeking to avoid compliance with act or orders, §23-2-417.
Chairman.
Designation, §23-2-101.

PUBLIC SERVICE COMMISSION —Cont'd
Clean energy development act, §§23-18-701 to 23-18-703.
Complaints to commission.
Separation or consolidation of complaints, §23-2-416.
Service of copy of complaint, §23-3-119.
Who may complain, §23-3-119.
Composition, §23-2-101.
Confidentiality of information.
Electric utility bills, usage and payment records, §23-2-304.
Costs.
Contest before commission.
Unsuccessful party to be taxed with costs, §23-2-428.
Deposit of costs.
Commission not required to deposit, §23-2-428.
Court of appeals.
Appeals.
Orders of commission.
Jurisdiction, §23-2-423.
Depositions, §23-2-412.
Disconnections.
Electricity service.
Protection against, §23-2-304.
Electric cooperative corporations.
Jurisdiction of commission, §§23-18-201, 23-18-308.
Generation and transmission cooperatives, §23-4-1107.
Electric demand response.
Regulation, §§23-18-1001 to 23-18-1005.
Electric utility storm recovery securitization financing.
Jurisdiction of public service commission, §23-18-904.
Energy conservation.
Authority of commission, §23-3-405.
Evidence.
Copies of official papers, §23-1-111.
Rules of evidence, §23-2-403.
Expenses.
Payment, §§23-2-108, 23-2-110.
Time of payment, §23-2-111.
Record of cost of operation and maintenance, §23-2-108.
Travel expenses, §23-2-109.
Federal aid.
Certain loans not within jurisdiction of commission, §23-18-202.

PUBLIC SERVICE COMMISSION —Cont'd
Fees.
Schedule of fees, §23-2-314.
Hearings, §23-2-415.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Hearing on application or amendment, §§23-18-516 to 23-18-518.
Navigable water crossings.
Petition by river crossing proprietor.
Hearing on, §23-3-505.
Notice, §23-2-415.
Place of hearing, §23-2-103.
Rehearings, §23-2-422.
Special commissioners for hearings, §23-2-102.
Compensation, §23-2-102.
Inventories.
Commission may require inventories of property, §23-2-307.
Investigations.
Commissioner or examiner, §23-2-429.
Powers of commission, §§23-2-310, 23-2-402.
Rates, charges, or service of utilities.
Preliminary investigation, §23-3-118.
Surcharge to recover expenditures mandated by public authorities, §23-4-505.
Service of utilities.
Preliminary examination, §23-3-118.
Jurisdiction, §§23-2-301, 23-3-202.
Actions by or against commission, §23-1-108.
Appeals of orders.
Court of appeals, §23-2-423.
Electric cooperative corporations, §§23-18-201, 23-18-308.
Federal aid.
Certain loans not within jurisdiction of commission, §23-18-202.
Intrastate transportation services, §23-2-303.
Rate making.
Exclusive jurisdiction, §23-4-201.
Rural telecommunications cooperatives, §23-17-206.
Jury.
Actions by or against commission.
Tried without jury, §23-1-110.

PUBLIC SERVICE COMMISSION —Cont'd
Lobbyist.
Time limit for registering as after expiration of term of service, §23-2-113.
Notice.
Appeals, §23-2-423.
Hearings, §23-2-415.
Service, §23-2-405.
Oaths.
Administration of oaths, §23-2-406.
Oath of office, §23-2-101.
Offices, §23-2-103.
Orders.
Amendment, §23-2-426.
Compliance with orders.
Burden of proof on person seeking to avoid compliance, §23-2-417.
Power to compel, §23-1-104.
Required, §23-1-103.
Contracts in violation of orders void, §23-1-112.
Copies as evidence, §23-2-420.
Definition of "commission," §23-2-401.
Judicial review, §23-2-423.
Effect, §23-2-424.
Rehearings, §23-2-422.
Effect, §23-2-424.
Rescinding, §23-2-426.
Service, §23-2-421.
Stays, §23-2-424.
Sufficiency of detail, §23-2-421.
Time for compliance, §23-2-421.
Extension, §23-2-421.
Time for making, §23-2-421.
Violations.
Penalties, §23-1-103.
Written orders required, §23-2-420.
Penalties.
Subpoenas.
Failure to comply, §23-2-409.
Perjury.
Witnesses, §23-2-413.
Permits.
Assignability.
Indeterminate permits granted under 1919 act, §23-1-113.
Personnel.
Assistant general counsel, §23-2-106.
Power to employ, §23-2-105.
Restrictions on activities of employees, §23-2-107.
Petitions.
Appeals.
Orders of commission, §23-2-423.

PUBLIC SERVICE COMMISSION —Cont'd
Pipelines.
State highway and transportation department or state highway commission.
Authority conferred and vested in concerning regulation of pipeline companies.
Transferred, vested and conferred upon public service commission, §23-2-209.
Pleading, §23-2-403.
Powers, §23-2-301.
Enumeration, §23-2-304.
Organization or reorganization of utilities, §23-3-101.
Rate making, §23-4-201.
Subpoena power, §§23-2-313, 23-2-407.
Qualifications of members, §23-2-101.
Quorum, §23-2-419.
Votes necessary for action, §23-2-104.
Records.
Appeals.
Orders of commission, §23-2-423.
Cost of operation and maintenance, §23-2-108.
Open to public, §23-2-316.
Protective orders, §23-2-316.
Proceedings before commission, §23-2-418.
Renewable energy development, §§23-18-601 to 23-18-604.
Reports.
Annual report to governor, §23-2-315.
Right of entry, §§23-2-310, 23-2-311.
Rules and regulations.
Compliance required, §23-1-103.
Powers of commission, §23-2-305.
United States government regulations.
Commission regulations not to conflict with, §23-18-203.
Violations.
Penalties, §23-1-103.
Rural and community liaison, §23-2-112.
Rural telecommunications cooperatives.
Commission defined, §23-17-202.
Consolidation.
Approval of commission required, §23-17-224.
General provisions, §§23-17-201 to 23-17-242.
Jurisdiction of commission, §23-17-206.
Salaries.
Assistant general counsel, §23-2-106.

PUBLIC SERVICE COMMISSION —Cont'd
Salaries —Cont'd
Payment, §23-2-110.
Time of payment, §23-2-111.
Service of process, §23-2-405.
Orders, §23-2-421.
Subpoenas.
Failure to comply, §23-2-409.
Powers of commission, §§23-2-313, 23-2-407.
Production of books and records, §23-2-408.
Terms of office, §23-2-101.
Time.
Appeals.
Notice of appeal, §23-2-423.
Rehearings.
Application for, §23-2-422.
Transportation.
Free transportation for commissioners and employees, §23-2-109.
Votes necessary for action, §23-2-104.
Witnesses.
Compelling attendance and testimony, §23-2-313.
Depositions, §23-2-412.
Exemption from prosecution based on testimony, §23-2-411.
False testimony.
Penalties, §23-1-105.
Fees, §23-2-414.
Mileage, §23-2-414.
Perjury, §23-2-413.
Refusal to attend or testify.
Contempt proceedings, §23-2-410.
Self-incrimination.
No bar to testimony, §23-2-411.
Subpoena power, §§23-2-313, 23-2-407.

PUBLIC UTILITIES.
Accounts and accounting.
Powers of regulatory commissions as to, §23-2-306.
Storm cost reserve accounting, §23-4-112.
Acquisition, control or merger.
Appeals.
Judicial review of orders of commission, §23-3-313.
Stay of order pending review, §23-3-314.
Application for approval.
Filing, §23-3-303.
Review, §23-3-303.
Commission.
Judicial review of orders, §23-3-313.
Stay of order pending review, §23-3-314.

PUBLIC UTILITIES —Cont'd
Acquisition, control or merger —Cont'd
Commission —Cont'd
Powers generally, §23-3-305.
Definitions, §23-3-302.
Disapproval.
Grounds, §23-3-310.
Exemption from act, §23-3-303.
Expenses.
Investigations, §23-3-309.
Hearings.
Determination, §23-3-311.
Notice, §23-3-311.
Rehearing, §23-3-312.
Stay of order pending review, §23-3-314.
Injunctions.
Violation of provisions of act, §23-3-316.
Investigations.
Expenses, §23-3-309.
Judicial review, §23-3-313.
Stay of order pending review, §23-3-314.
Jurisdiction.
Court jurisdiction, §23-3-315.
Legislative purpose of act, §23-3-301.
Notice.
Hearing, §23-3-311.
Powers of commission generally, §23-3-305.
Procedure.
Generally, §23-3-306.
Restrictions, §23-3-306.
Service of process.
Agent, §23-3-315.
Statement to be filed with commission, §23-3-307.
Amendments, §23-3-307.
Combination of statements, §23-3-308.
Contents, §23-3-307.
Stay of order pending review, §23-3-314.
Violation of provisions.
Evidence, §23-3-316.
Injunctions, §23-3-316.
Penalties, §23-3-304.
Actions.
Jurisdiction.
Actions by or against commission, §23-1-108.
Jury.
Actions to be tried without jury, §23-1-110.
Advertising.
Recovery of advertising costs.
Definitions, §23-4-207.

PUBLIC UTILITIES —Cont'd
Advertising —Cont'd
Recovery of advertising costs —Cont'd
Exceptions to prohibitions, §23-4-207.
Informational advertising.
Defined, §23-4-207.
Political advertising.
Defined, §23-4-207.
Prohibited, §23-4-207.
Promotional advertising.
Defined, §23-4-207.
Agents.
Acts of agent are acts of corporation, §23-1-107.
Appeals.
Acquisition, control or merger.
Judicial review of orders of commission, §23-3-313.
Stay of order pending review, §23-3-314.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Decisions of commission on application for, §23-18-524.
Navigable water crossings, §§23-3-511, 23-3-512.
Arkansas clean energy development act, §§23-18-701 to 23-18-703.
Arkansas renewable energy development act of 2001, §§23-18-601 to 23-18-604.
Broadband over power enabling act, §§23-18-801 to 23-18-808.
Certificates of public convenience and necessity.
New construction or extension.
Application for certificate, §23-3-203.
Notice, §23-3-203.
Complaints.
Unauthorized construction or operation, §23-3-206.
Issuance, §23-3-205.
Required, §23-3-201.
Unauthorized construction or operation, §23-3-206.
Order preliminary to issuance, §23-3-204.
Hearing on application, §23-3-205.
Permits.
Operation under suspended permit.
Prohibited except under certificate of necessity, §23-3-202.
Telecommunications.
Competing local exchange carrier, §23-17-409.

PUBLIC UTILITIES —Cont'd
Clean energy development act, §§23-18-701 to 23-18-703.
Coal.
Electricity.
Arkansas-mined coal.
Use by electric utilities, §23-18-105.
Collective bargaining.
Rates and charges.
Establishment of rates by public service commission.
No changes allowed in terms of employment subject to collective bargaining agreements, §23-4-421.
Complaints to regulatory commission.
Pole attachments.
Authority of commission to hear, §23-4-1004.
Separation or consolidation of complaints, §23-2-416.
Service of copy of complaint, §23-3-119.
Who may complain, §23-3-119.
Compliance with provisions.
Required, §23-1-103.
Consolidation.
Approval by regulatory commissions, §23-3-102.
Construction outside state.
Approval required, §23-18-104.
Costs.
Disallowance for failure to obtain prior approval, §23-18-104.
Exempt utilities, §23-18-104.
Notice of proposed construction, §23-18-104.
Consumer utilities rate advocacy division.
Citation of subchapter, §23-4-301.
Creation, §23-4-303.
Director, §23-4-304.
Duties.
Generally, §23-4-305.
Establishment, §23-4-303.
Intervention by others not precluded, §23-4-306.
Legislative findings, §23-4-302.
Powers and duties.
Generally, §23-4-305.
Purpose, §23-4-302.
Records, §23-4-307.
Staff, §23-4-304.
Title of subchapter, §23-4-301.

PUBLIC UTILITIES —Cont'd
Contracts.
Interruptible contracts for service with industrial users.
Power of utilities to make, §23-3-117.
Violation of act or orders of commission.
Void contracts, §23-1-112.
Court of appeals.
Acquisition, control or merger.
Judicial review of orders of commission, §23-3-313.
Stay of order pending review, §23-3-314.
Courts.
Environmental and economic protection.
Jurisdiction of courts, §23-18-525.
Damages.
Franchises.
Municipal franchises.
Violation, §23-3-116.
Definitions, §§23-1-101, 23-3-120.
Acquisition, control or merger, §23-3-302.
Advertising.
Recovery of advertising costs, §23-4-207.
Electricity.
Avoided costs, §23-3-702.
Purchase from affiliated company, §23-18-103.
Environmental and economic protection, §23-18-503.
Navigable water crossings, §23-3-501.
Pole attachments, §23-4-1001.
Demand response.
Regulation of electric demand response, §§23-18-1001 to 23-18-1005.
Deposits.
Consumer deposits.
Interest on, §23-4-206.
Discrimination.
Complaints to commission, §23-3-119.
Investigations.
Preliminary investigation by commission, §23-3-118.
Pole attachments.
Nondiscriminatory access, §23-4-1002.
Unreasonable preferences prohibited, §23-3-114.
Earnings.
Gross earnings.
Annual fees to be charged utilities.
Basis, §23-3-110.

PUBLIC UTILITIES —Cont'd
Earnings —Cont'd
Gross earnings —Cont'd
Annual statement to be submitted to commission, §23-3-109.
Electric demand response.
Regulation of electric demand response, §§23-18-1001 to 23-18-1005.
Electric utilities.
Demand response.
Regulation, §§23-18-1001 to 23-18-1005.
Eminent domain.
Environmental and economic protection, §23-18-528.
Employment relations.
Acts of employee are acts of corporation, §23-1-107.
Energy conservation.
Citation of act.
Short title, §23-3-401.
Functions of utilities.
Conservation declared proper utility function, §23-3-404.
Legislative declaration, §23-3-402.
Nonresidential business consumers.
Notice of exemption opting out of utility sponsored conservation measures, §23-3-405.
Programs and measures by utilities.
What constitutes, §23-3-403.
Public service commission.
Authority, §23-3-405.
Purpose of provisions, §23-3-402.
Title of act.
Short title, §23-3-401.
Environmental and economic protection.
Appeals.
Certificates of environmental compatibility and public need.
Decision of commission on application for, §23-18-524.
Certificates of environmental compatibility and public need.
Amendments, §23-18-515.
Hearings, §§23-18-516 to 23-18-518.
Appeals.
Decision of commission on application for certificate, §23-18-524.
Application.
Commentary by state agencies, §23-18-512.
Contents, §23-18-511.

PUBLIC UTILITIES —Cont'd
Environmental and economic protection —Cont'd
Certificates of environmental compatibility and public need —Cont'd
Application —Cont'd
Decisions of commission, §23-18-519.
Appeal, §23-18-524.
Findings of fact required, §23-18-520.
Deficiency letters, §23-18-514.
Fees, §23-18-512.
Hearing on, §§23-18-516 to 23-18-518.
Modification, §23-18-519.
Notice, §23-18-513.
Service of copies, §23-18-513.
Compliance with certificate required, §23-18-522.
Denial of certificate.
Decision of commission, §23-18-519.
Appeals, §23-18-524.
Findings of fact required, §23-18-520.
Fees.
Application fee, §23-18-512.
Granting of certificate.
Decision of commission, §23-18-519.
Appeals, §23-18-524.
Findings of fact required, §23-18-520.
Hearing on application or amendment, §23-18-516.
Conduct of hearing, §23-18-518.
Joint hearings and orders, §23-18-507.
Parties, §23-18-517.
Intervention in certification proceedings, §23-18-517.
Issuance, §23-18-521.
Effect, §23-18-521.
Joint hearings and orders, §23-18-507.
Parties to certification proceedings, §23-18-517.
Required, §23-18-510.
Exceptions, §23-18-510.
Transfer, §23-18-523.
Citation of act.
Short title, §23-18-501.
Courts.
Jurisdiction, §23-18-525.
Definitions, §23-18-503.

PUBLIC UTILITIES —Cont'd
Environmental and economic protection —Cont'd
Department of environmental quality.
Jurisdiction, §23-18-506.
Eminent domain, §23-18-528.
Exemptions from chapter, §23-18-504.
Waiver, §23-18-504.
Forecasts of loading and resources, §23-18-529.
Joint hearings and orders, §23-18-507.
Legislative declaration, §23-18-502.
Local governments.
Powers, §23-18-526.
Major utility facilities.
Defined, §23-18-503.
Municipal electric consolidated authorities.
Applicability of act, §23-18-530.
Ownership of minority interest in exempt major facility by a public utility, §23-18-504.
Policy of state, §23-18-502.
Pollution control and ecology commission.
Jurisdiction, §23-18-506.
Powers of commission restricted, §23-18-507.
Public service commission.
Consultants.
Additional consultants authorized, §23-18-509.
Definition of "commission," §23-18-503.
Joint hearings and orders, §23-18-507.
Power.
Limitations on, §23-18-507.
Rules and regulations.
Promulgation, §23-18-508.
Rules and regulations.
Promulgation, §23-18-508.
State agencies.
Cooperation with commission, §23-18-527.
Powers, §23-18-526.
Title of act.
Short title, §23-18-501.
Water and air pollution control act.
Unaffected by subchapter, §23-18-505.
False testimony, reports or entries on books, §23-1-105.
Federal communications commission.
Pole attachments.
Authority and jurisdiction unaffected by provisions, §23-4-1006.

PUBLIC UTILITIES —Cont'd
Federal communications commission —Cont'd
Pole attachments —Cont'd
Certification regarding state regulation, §23-4-1005.
Fees.
Actions for fees brought in name of state, §23-1-109.
Annual fees charged utilities, §23-3-110.
Failure or refusal to pay.
Penalty, §23-3-110.
Statement of fees due, §23-3-110.
Time for payment, §23-3-110.
Carriers, §§23-16-101 to 23-16-106.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Application fee, §23-18-512.
Public service commission.
Schedule of fees, §23-2-314.
Foreign corporations.
Domestication required, §23-3-108.
Service of process, §23-3-108.
Forms.
Filling out and returning, §23-3-112.
Franchises.
Municipal franchises.
Violation.
Damages, §23-3-116.
Penalties, §23-3-116.
Gas utilities extension projects, §§23-3-601 to 23-3-607.
Gross earnings.
Annual fees charged utilities.
Basis, §23-3-110.
Annual statement to be submitted to commission, §23-3-109.
Hearings.
Acquisition, control or merger.
Determination, §23-3-311.
Notice, §23-3-311.
Rehearing, §23-3-312.
Stay of order pending review, §23-3-314.
Highways.
Wires over public or private ways.
Duties of utility, §23-3-115.
Information.
Furnishing commission on request, §23-2-309.
Inspections.
Books, papers, reports and statements, §23-2-309.
Refusal to permit inspection.
Effect, §23-2-312.

PUBLIC UTILITIES —Cont'd
Interest.
Deposits with public utilities, §23-4-206.
Interstate commerce.
Exemptions from chapter, §23-1-102.
Rates, charges and classifications.
Authority of commission, §23-4-102.
Intervention.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Parties to certification proceedings, §23-18-517.
Inventories.
Commission may require inventories of property, §23-2-307.
Investigations.
Powers of regulatory commission, §§23-2-310, 23-2-402.
Preliminary investigation of rates, charges or service by commission, §23-3-118.
Rates and charges.
Change in rates.
Investigation of proposed rates, §23-4-405.
Surcharge to recover expenditures mandated by public authorities.
Investigation by commission, §23-4-505.
Jurisdiction.
Navigable water crossings.
Public service commission, §23-3-503.
Jury.
Actions by or against commission.
Tried without jury, §23-1-110.
Liens.
Creation under supervision of regulatory commission, §23-3-103.
Local governments.
Environmental and economic protection.
Powers of local governments, §23-18-526.
Major utility facilities.
Construction.
Environmental and economic protection, §§23-18-501 to 23-18-530.
Mandamus.
Rates and charges.
Change in rates.
Petition, §23-4-417.

PUBLIC UTILITIES —Cont'd
Navigable water crossings.
Appeals.
Notice of petition for review, §23-3-511.
Petition for review.
Contents, §23-3-511.
Notice, §23-3-511.
Powers of circuit court, §23-3-511.
Supreme court.
Appeal from circuit court to, §23-3-512.
Transcript, §23-3-511.
Case determined on transcript, §23-3-511.
Applicability of provisions, §23-3-502.
Circuit courts.
Appeals to, §23-3-511.
Appeal to supreme court from, §23-3-512.
Damages.
Exercise of crossing right by river crossing proprietor, §23-3-510.
Definitions, §23-3-501.
Jurisdiction.
Public service commission, §23-3-503.
Public service commission.
Definition of "commission," §23-3-501.
Hearings.
Petitions by river crossing proprietors, §23-3-505.
Jurisdiction, §23-3-503.
Order granting rights to river crossing proprietor, §23-3-508.
Powers, §23-3-503.
Public service facilities.
Defined, §23-3-501.
River crossing proprietors.
Defined, §23-3-501.
Petitions by.
Contents, §23-3-504.
Costs and expenses of proceedings, §23-3-510.
Granting of prayer of petition, §23-3-507.
Hearing on petition, §23-3-505.
Objections to, §23-3-506.
Replacing navigable water crossing, §23-3-513.
Replacing navigable water crossing by, §23-3-513.
Rights.
Order granting rights, §23-3-508.
Perpetual rights, §23-3-509.
Scope of provisions, §23-3-502.

PUBLIC UTILITIES —Cont'd
Navigable water crossings —Cont'd
Supreme court.
Appeals to, §23-3-512.
Notice.
Rates and charges.
Change in rates.
Changes allowed without notice, §23-4-403.
Intention to file application for rate change, §23-4-401.
Proposed changes, §23-4-402.
Parties.
Environmental and economic protection.
Certificates of environmental compatibility and public need.
Certification proceedings, §23-18-517.
Penalties.
Actions for penalties brought in name of state, §23-1-109.
Cumulative penalties, §23-1-106.
False testimony, reports or entries on books, §23-1-105.
Franchises.
Violation of municipal franchise, §23-3-116.
Rates and charges.
Billing.
Units charged for.
Failure of utility bill to show, §23-4-203.
Disconnecting charges.
Violations of provisions, §23-4-204.
Schedules.
Bills rendered in accordance with.
Violations of provisions, §23-4-202.
Failure to furnish on request, §23-4-202.
Violations of act, orders or regulations, §§23-1-103, 23-1-114.
Permits.
Certificates of public convenience and necessity.
Operation under suspended permit.
Prohibited except under certificate of necessity, §23-3-202.
Indeterminate permits granted under 1919 act.
Assignability, §23-1-113.
Pole attachments.
Applicability of provisions, §23-4-1006.
Certification to federal communications commission, §23-4-1005.

PUBLIC UTILITIES —Cont'd
Pole attachments —Cont'd
Complaints, authority of commission to hear, §23-4-1004.
Definitions, §23-4-1001.
Nondiscriminatory access, §23-4-1002.
Rates, terms and conditions.
Regulation by commission, §23-4-1003.
Preferences.
Unreasonable preferences prohibited, §23-3-114.
Public service commission.
Pole attachments.
Complaints, authority of commission to hear, §23-4-1004.
Rates, terms and charges, §23-4-1003.
Powers regarding rates, charges, classification and other actions, §23-4-102.
Railroads.
General provisions, §§23-11-101 to 23-11-223.
Rates and charges.
Billing.
Rate schedules.
Bills rendered in accordance with, §23-4-202.
Units charged for.
Bills must show, §23-4-203.
Change in rates.
Application for.
Additional application for rate increase.
Time of filing, §23-4-419.
Apportionment of increase, §23-4-410.
Authority of commission to fix rate, §23-4-410.
Collection of rate, §23-4-412.
Conditional implementation of suspended rates, §23-4-411.
Effective date, §23-4-409.
Failure of commission to reach timely decision, §23-4-411.
Interim implementation of suspended rates, §23-4-408.
Investigations, §§23-4-405, 23-4-622.
Mandamus.
Petition, §23-4-417.
Notice.
Changes allowed without notice, §23-4-403.
Intention to file application for rate change, §23-4-401.
Proposed changes, §23-4-402.

PUBLIC UTILITIES —Cont'd
Rates and charges —Cont'd
Change in rates —Cont'd
Order.
Increase not effective until final order, §23-4-409.
Issuance of commission's order, §23-4-412.
Refunds of excessive bonded collections, §23-4-414.
Order not stayed during rehearing, §23-4-415.
Suspension of proposed rates, §23-4-407.
Procedure, §23-4-110.
Refunds of excessive bonded collections.
Order, §23-4-414.
Order not stayed during rehearing, §23-4-415.
Suit to compel refunds, §23-4-418.
Surcharge to collect excessive refunds, §23-4-416.
Reports.
Status of application, §23-4-420.
Schedules.
Proposed changes to be reflected in schedule, §23-4-404.
Surcharges.
Collection of excessive refunds, §23-4-416.
Collection of rates increased on rehearing or by courts, §23-4-413.
Suspension of proposed rate, §23-4-407.
Interim implementation of suspended rates, §23-4-408.
Test periods, §23-4-406.
Time.
Order suspending proposed rates.
Time limitation on length of order, §23-4-407.
Collective bargaining agreements.
Establishment of rate by public service commission.
No changes allowed in terms of employment subject to collective bargaining agreements, §23-4-421.
Consumer utilities rate advocacy division, §§23-4-301 to 23-4-307.
Disconnecting charges.
Prohibited, §23-4-204.
Violations of provisions.
Penalty, §23-4-204.
Discrimination.
Unreasonable preferences prohibited, §23-3-114.

PUBLIC UTILITIES —Cont'd
Rates and charges —Cont'd
Electric cooperative corporations, §§23-4-901 to 23-4-909.
Energy conservation measures.
Authority of commission to declare as costs of providing utility service, §23-3-405.
Establishment.
Authority of commission, §23-4-101.
Incremental resources, acquisition or construction by electric utility.
Costs and return associated with, recovery and allowance, §23-18-107.
Interstate rates and charges.
Authority of commission, §23-4-102.
Investigations.
Preliminary investigation by commission, §23-3-118.
Military installations.
Water and sewer services provided by municipality in county with population in excess of 200,000.
Petitioning public service commission to set rates, §23-4-208.
Minimum charges, §23-4-109.
Municipal corporations.
Divested of authority over rate making, §23-4-201.
Overpayments.
Refunds, §23-4-205.
Plant or property included in rate base.
Determining value, §23-4-111.
Pole attachments.
Certification to federal communications commission, §23-4-1005.
Regulation by commission, §23-4-1003.
Public service commission.
Exclusive jurisdiction as to rate making, §23-4-201.
Military installations.
Municipality in county with population in excess of 200,000.
Petitioning commission to exercise jurisdiction to set rates for water and sewer services, §23-4-208.
Reasonable rates.
Required, §§23-4-103, 23-4-104.
Refunds, §23-4-205.

PUBLIC UTILITIES —Cont'd
Rates and charges —Cont'd
Schedules.
Bills rendered in accordance with, §23-4-202.
Penalty for violation, §23-4-202.
Change in rates.
Proposed changes to be reflected in schedule, §23-4-404.
Deviation.
Greater or less rate not to be charged, §23-4-107.
Filing, §23-4-105.
Furnishing on request, §23-4-202.
Penalty for failure to furnish, §23-4-202.
Public inspection, §23-4-106.
Sliding scales of rates, §23-4-108.
Storm cost reserve accounting, §23-4-112.
Surcharge to recover expenditures mandated by public authorities.
Calculation of amount of surcharge, §23-4-503.
Disapproval of surcharge, §23-4-507.
Filing interim rate schedules, §23-4-502.
Inadequate surcharges.
Additional surcharges, §23-4-509.
Intent of legislature, §23-4-501.
Investigation by commission, §23-4-505.
Legislative findings, §23-4-501.
Modification of surcharge, §23-4-507.
Refund of excessive surcharge, §23-4-506.
Rehearing.
Application no stay of order, §23-4-508.
Surcharge effective upon filing, §23-4-504.
Transition costs.
Defined, recovery by electric utility, §23-4-209.
Value of plant or property included in rate base.
Determining, §23-4-111.
Records.
Consumer utilities rate advocacy division, §23-4-307.
Refunds.
Surcharge to recover expenditures mandated by public authorities.
Excessive surcharge, §23-4-506.
Renewable energy development, §§23-18-601 to 23-18-604.
Reports.
Annual reports, §23-2-308.
PUBLIC UTILITIES —Cont'd
Reports —Cont'd
Environmental and economic protection.
Forecasts of loading and resources, §23-18-529.
Rate applications.
Reports on status of, §23-4-420.
Special reports, §23-2-308.
Right of entry.
Powers of regulatory commissions, §§23-2-310, 23-2-311.
Rules and regulations.
Powers of regulatory commissions, §23-2-305.
Violations.
Penalty, §23-1-103.
Safety.
Requirements, §23-3-113.
Service.
Complaints to commission, §23-3-119.
Discrimination.
Unreasonable preferences prohibited, §23-3-114.
Investigations.
Preliminary investigation by commission, §23-3-118.
Requirements, §23-3-113.
Service areas, §§23-18-101, 23-18-102.
Service of process.
Complaints to regulatory commissions.
Service of copy of complaint, §23-3-119.
Foreign corporations, §23-3-108.
Stays.
Acquisition, control or merger.
Stay of order pending review, §23-3-314.
Stocks and bonds.
Amount of issue, §23-3-105.
Generally, §23-3-103.
Issuance.
Proceeds.
Disposition, §23-3-106.
Purposes, §23-3-104.
Supervision of commission, §23-3-103.
When authorized, §23-3-104.
Liability of state, §23-3-107.
Proceeds.
Disposition, §23-3-106.
Purchase of stock in another utility.
Approval by regulatory commissions required, §23-3-102.
Storm recovery.
Cost reserve accounting, §23-4-112.
Securitization financing, §§23-18-901 to 23-18-912.

PUBLIC UTILITIES —Cont'd
Telecommunications, §§23-17-101 to 23-17-121.
Unregulated transactions.
Transaction between utility and divisions, components or affiliates.
Subject to rules promulgated by commission, §23-3-102.
Utility facility environmental and economic protection act, §§23-18-501 to 23-18-530.
Water power companies, §§23-18-401 to 23-18-410.
Waters and watercourses.
Navigable water crossings, §§23-3-501 to 23-3-513.
Water power companies, §§23-18-401 to 23-18-410.
Wires.
Public or private ways.
Duty of utility as to wires over, §23-3-115.

PUNITIVE DAMAGES.
Insurance.
Commercial property and casualty insurance policies.
Exclusion of punitive damages, §23-79-307.
Livestock killed or wounded by railroad.
Arbitration of damages, §23-12-912.

PURCHASING GROUPS.
Risk retention and purchasing groups, §§23-94-201 to 23-94-215.

Q

QUALITY ASSESSMENT AND IMPROVEMENT SYSTEMS.
Managed health care plans, §§23-99-701 to 23-99-706.

R

RACING.
Horse racing.
General provisions, §§23-110-101 to 23-110-415.

RADIO.
Portable electronics insurance, §§23-88-501 to 23-88-507.

RAFFLES.
Charitable bingo and raffles enabling act, §§23-114-101 to 23-114-706.

RAILROAD POLICE.
Appointment.
Approval by governor, §23-12-701.
Authorized, §23-12-701.
Arrest.
Jailing of persons arrested, §23-12-704.
Power to arrest, §23-12-703.
Badges, §23-12-705.
Bonds, surety, §23-12-702.
Compensation, §23-12-706.
Governor.
Approval of appointment, §23-12-701.
Identification cards, §23-12-705.
Powers.
Termination of powers, §23-12-707.
Termination of railroad police powers, §23-12-707.

RAILROADS.
Accidents.
Clearing right-of-way following derailment or wreck, §23-12-203.
Actions.
Discrimination.
Recovery of penalties, §23-10-103.
Injuries.
Who may sue for personal injuries, §23-12-903.
Advertising.
Passes.
Issuance in exchange for advertising space, §23-4-806.
Arbitration.
Livestock.
Killing or injuring.
Arbitration of damages, §23-12-912.
Arrest.
Drunken persons.
Authority of conductors, §23-12-708.
Solicitation of business on train or in depot.
Public places.
Conductors authorized to make arrest, §23-12-708.
Attorney general.
Passes.
Permitted to accept and use pass, §23-4-804.
Attorneys at law.
Suits against railroad companies for violations.
Attorney's fee taxed, §23-12-105.
Auditor of state.
Passes.
Permitted to accept and use pass, §23-4-804.

RAILROADS —Cont'd
Bells.
Crossings.
Bell or whistle to be sounded at crossing, §23-12-410.
Bills of lading.
Charges specified in bill of lading controlling, §23-4-613.
Delivery of goods on payment of charges shown in bill of lading, §23-4-613.
Liability for refusal to deliver, §23-4-613.
Burden of proof.
Livestock.
Killing or injuring, §23-12-910.
Clergymen.
Free carriage.
Authorized, §23-4-807.
Coal.
Coal cars.
Rates and charges.
Switching charges, §23-4-612.
Charge allowed when coal car is furnished, §23-4-612.
Penalty for violations, §23-4-612.
Connecting lines.
Formation.
Aid to construction of other railroad authorized, §23-11-304.
Consolidation.
Aiding other roads by purchasing stock when intending to form connection, §23-11-304.
Articles of consolidation of purchase.
Amount of capital stock, §23-11-310.
Filing, §23-11-310.
Authorized, §23-11-306.
Connection of lines at state boundary line.
Authorized, §23-11-305.
Contract of consolidation, §23-11-305.
Copy filed with secretary of state, §23-11-305.
Execution, §23-11-305.
Stock and stockholders.
Issuance of stock, §23-11-305.
Continuous line.
Consolidation to effect, §23-11-306.
Required, §23-11-306.
Contract of consolidation.
Consolidation when lines connect at state boundary line, §23-11-305.
Copy of contract filed with secretary of state, §23-11-305.
Execution, §§23-11-305, 23-11-306.

RAILROADS —Cont'd
Consolidation —Cont'd
Effect, §23-11-306.
Foreign corporations.
Consolidation with, §23-11-307.
Liability for debts of all consolidated companies, §23-11-313.
Time limit on claims, §23-11-313.
Purpose, §23-11-306.
Rights and privileges of consolidated companies, §23-11-312.
State boundary line.
Consolidation when line connect at, §23-11-305.
Stock and stockholders.
Amount of capital stock of consolidated or merged corporation, §23-11-310.
Bonds issued by consolidating corporations, §23-11-308.
Consent required, §23-11-309.
Consolidation when lines connect at state boundary line.
Consent of stockholders, §23-11-309.
Issuance of stock, §23-11-305.
Ratification of consolidation proposal, §23-11-306.
Construction.
Railroad enjoining state.
Authorized, §23-11-303.
Construction and interpretation.
Freight.
Cumulative effect of act, §23-10-405.
Damages, §23-10-304.
Perishable freight.
Cumulative effect of provisions, §23-10-404.
Rates and charges, §23-4-601.
Contempt.
Discrimination.
Mandamus to enforce act.
Failure to comply, §23-4-719.
Contract carriers, safe transportation of railroad employees, §§23-16-501 to 23-16-511.
Contracts.
Conflicts of interest.
Officers interested in certain contracts.
Contracts void, §23-10-108.
Consolidation, §§23-11-305, 23-11-306.
Freight.
Liability.
Contracts abridging liability of railroad void, §23-10-408.

RAILROADS —Cont'd
Contracts —Cont'd
Monopolies.
Control of parallel or competing line.
Contracts for acquisition void, §23-11-311.
Safe transportation of railroad employees by contract carriers.
Right to contract not impaired, §23-16-511.
Corporations.
Abandonment of operations without authority.
Receivers, §23-12-613.
Stockholders to offer stock for sale, §23-12-612.
Penalty for violations, §23-12-612.
Applicability of provisions, §23-11-222.
Application for incorporation, §23-11-204.
Hearing, §23-11-205.
Articles of incorporation.
Amendment.
Approval by agency, §23-11-220.
Fee, §23-11-220.
Procedure, §23-11-220.
Contents, §23-11-203.
Filing, §23-11-207.
Completion of incorporation upon, §23-11-208.
Charter.
Extension by agency, §23-11-223.
Filing, §23-11-207.
Completion of incorporation upon, §23-11-208.
Issuance, §23-11-206.
Order of agency, §23-11-205.
State highway and transportation department.
Extension by department, §23-11-223.
Citation of act.
Short title, §23-11-201.
Definition of "railroad corporation," §23-11-202.
Directors.
Bond issues.
Authority of board, §23-11-216.
Committees, §23-11-218.
Election, §23-11-213.
Free transportation for.
Authorized, §23-4-807.
Meetings, §23-11-214.
Number of directors, §23-11-213.
Officers.
Selection, §23-11-218.
Powers.
Generally, §23-11-215.

RAILROADS —Cont'd
Corporations —Cont'd
Directors —Cont'd
President.
Election by director, §23-11-218.
Terms of office, §23-11-213.
Dissolution, §23-11-211.
Executors and administrators.
Voting of stock, §23-11-212.
Fees.
Amendment of articles of incorporation, §23-11-220.
Foreign corporations.
Fees charged foreign companies, §23-3-111.
Incorporation fees, §23-11-102.
Fiduciaries.
Voting of stock, §23-11-212.
Foreign corporations.
Consolidation with, §23-11-307.
Construction of railroads in state.
Authorized, §23-11-401.
Domestication.
Required, §23-3-108.
Fees charged foreign railroads, §23-3-111.
Purchase or lease of state roads, §23-11-402.
Right to construct railroads in state, §23-11-401.
Sale or lease of road or property.
Lessor and lessee of railroad subject to laws, §23-11-403.
Purchase or lease of state roads by, §23-11-402.
To connecting foreign railroad, §23-11-302.
Service of process, §23-3-108.
Taxation.
Right to tax uncurtailed, §23-11-404.
Guardians.
Voting of stock, §23-11-212.
Hearings.
Application for incorporation, §23-11-205.
Liabilities, §23-11-209.
Liquidation, §23-11-221.
Number of incorporators, §23-11-204.
Officers.
Election or appointment, §23-11-218.
Free transportation for.
Authorized, §23-4-807.
Powers, §23-11-209.
President.
Election by directors, §23-11-218.
Receivers.
Abandonment of operations without authority, §23-12-612.

RAILROADS —Cont'd
Corporations —Cont'd
Saving clause.
Extension of existence of existing corporations, §23-11-222.
Stock and stockholders.
Application for incorporation.
Contents.
Information as to stock, §23-11-204.
Consolidation.
Amount of capital stock of consolidated corporation, §23-11-310.
Consent required, §23-11-309.
Consolidation when lines connect at state boundary line.
Consent of stockholders, §23-11-309.
Issuance of stock, §23-11-305.
Ratification of consolidation proposal, §23-11-306.
Notice of meetings, §23-11-306.
Dividends.
Declaration, §23-11-217.
Payment, §23-11-217.
Executors and administrators.
Voting of stock, §23-11-212.
Fiduciaries.
Voting of stock, §23-11-212.
Guardians.
Voting of stock, §23-11-212.
Issuance of bonds or certificates of indebtedness, §23-11-216.
Meetings of stockholders.
Annual meeting, §23-11-211.
Consolidation.
Ratification of consolidation proposal, §23-11-306.
Election of directors, §23-11-213.
First meeting, §23-11-210.
Notice, §23-11-211.
First meeting, §23-11-210.
Ratification of consolidation proposals, §23-11-306.
Special meeting, §23-11-211.
Notice.
Consent of stockholders for purchase of stock, lease or consolidation of railroad, §23-11-309.
Subscription contracts for sale of stock, §23-11-219.
Voting of stock, §23-11-212.
Fiduciaries, §23-11-212.
Title of act.
Short title, §23-11-201.

RAILROADS —Cont'd
Crossings.
Bells.
Bell or whistle to be sounded at crossing, §23-12-410.
Construction.
State highway commission.
Jurisdiction over, §23-12-304.
Hearings.
Proposed road or street crossings, §23-12-304.
Highways.
Injunctions.
Improper crossing of highway and railroad, §23-12-306.
Right angles.
Public roads to cross railroads at, §23-12-306.
Injunctions.
Improper crossing of highway and railroad, §23-12-306.
Location.
State highway commission.
Jurisdiction, §23-12-304.
Notice.
Orders of state highway commission, §23-12-304.
Orders of state highway commission, §23-12-304.
Other railroads.
Connections or crossings with, §23-12-303.
Compensation for.
Ascertainment by court, §23-12-303.
Stoppage of trains at railroad intersections, §23-12-602.
Transfer of passengers of freight at intersection, §23-12-602.
Penalties.
Bell or whistle to be sounded at crossing.
Violations of provisions, §23-12-410.
Proposed road or street crossings.
Inspection, §23-12-304.
Regulation of crossings.
Citation of act.
Short title, §23-12-1001.
Complaint of inadequate action or unreasonable refusal.
Action on complaint, §23-12-1005.
Complaints of unlawful delay.
Action on complaints, §23-12-1008.
Investigations.
State highway commission, §§23-12-1004, 23-12-1007.

RAILROADS —Cont'd
Crossings —Cont'd
Regulation of crossings —Cont'd
Jurisdiction of state highway commission, §§23-12-1002, 23-12-1003.
Operation and movement of trains, §23-12-1006.
Penalties.
Inadequate action or unreasonable refusal, §23-12-1005.
Unlawful delay, §23-12-1008.
Rules and regulations, §§23-12-1004, 23-12-1007.
Title of act.
Short title, §23-12-1001.
State highway commission.
Inspection of proposed road or street crossings, §23-12-304.
Jurisdiction over construction and location, §23-12-304.
Regulation.
Complaint of inadequate action or unreasonable refusal.
Action on complaint, §23-12-1005.
Complaints of unlawful delay.
Action on complaints, §23-12-1008.
Investigations, §§23-12-1004, 23-12-1007.
Jurisdiction, §§23-12-1002, 23-12-1003.
Operation and movement of trains, §23-12-1006.
Rules and regulations, §§23-12-1004, 23-12-1007.
Supervision, §23-12-301.
Warning boards.
Required, §23-12-411.
Whistles.
Bell or whistle to be sounded at crossing, §23-12-410.
Damages.
Bell or whistle to be sounded at crossing.
Liability for violations, §23-12-410.
Connections or crossings with other railroads.
Ascertainment of amount of compensation by court, §23-12-303.
Discrimination.
Double damages for violations, §23-4-705.

RAILROADS —Cont'd
Damages —Cont'd
Employees.
Hours of work.
Freight trains.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Freight.
Collection from agent, §23-10-304.
False affidavit as to damages.
Perjury, §23-10-304.
Treble damages on refusal to pay, §23-10-304.
Construction and interpretation, §23-10-304.
Furnishing cars for freight.
Failure to furnish, §23-10-434.
Liability of carriers.
Damage to goods in transit, §23-10-304.
Express companies, §23-10-305.
Penalty for failure to pay, §23-10-305.
Initial carrier, §23-10-303.
Perishable freight.
Failure to forward, §23-10-440.
Failure to furnish cars for, §23-10-438.
Subrogation, §23-10-303.
Violations of provisions.
Actions for damages, §23-10-431.
Limitation of actions, §23-10-431.
Liability.
Legislative intent, §23-12-901.
Property damage, §23-12-902.
Contributory negligence, §23-12-907.
Restrictions on, §23-12-904.
Fires, §23-12-913.
Refusal to transport passenger or property at appointed time, §23-12-601.
Stock guards.
Failure to maintain stock guard.
Liability, §23-12-412.
Stopping trains within town limits upon petition.
Violations of provisions, §23-12-606.
Weeds.
Permitting certain weeds to seed on right-of-way.
Recovery of damages for maturing of weeds, §23-12-202.

RAILROADS —Cont'd
Damages —Cont'd
Willful interference with railroad.
Treble damages, §23-12-805.
Death.
Employees.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Liability.
Contributory negligence no complete defense, §23-12-904.
Definitions, §§23-10-101, 23-11-202.
Baggage, §23-10-209.
Employees.
Liability for injury or death of employees, §23-12-501.
Engaged in transporting persons or property, §23-4-701.
Freight, §23-10-402.
Shipper, §23-10-401.
Passes.
Government officials, §23-4-801.
Depots.
Penalties.
Failure or refusal to build depot and stop passenger trains at, §23-12-604.
Required, §23-12-604.
Penalty for failure or refusal to build, §23-12-604.
Union passenger or freight depots.
When required, §23-12-605.
Stopping passenger trains at, §23-12-604.
Agency may require passenger trains to stop at all stations, §23-12-603.
Penalty for failure or refusal to stop, §23-12-604.
Union passenger or freight depots.
When required, §23-12-605.
Derailment.
Clearing right-of-way following, §23-12-203.
Discrimination.
Actions.
Recovery of penalties, §23-10-103.
Applicability of provisions, §23-4-702.
Complaints.
Investigations by state highway and transportation department.
Duty to investigate, §23-4-714.
Contempt.
Mandamus to enforce act.
Failure to comply, §23-4-719.
Cumulative effect of act, §23-4-704.

RAILROADS —Cont'd
Discrimination —Cont'd
Damages.
Double damages for violations, §23-4-705.
Freight, §23-4-710.
Connecting lines.
Forwarding freight over.
Preferences prohibited, §23-10-411.
Contracts.
Pooling freight or dividing revenue prohibited, §23-4-711.
Drawback.
Prohibited, §§23-10-106, 23-10-410.
Long hauls.
Differentiation in compensation for long and short hauls.
Prohibited, §23-4-712.
Pooling.
Contracts for pooling freight prohibited, §23-4-711.
Prohibited, §23-10-410.
Short hauls.
Differentiation in compensation for long and short hauls.
Prohibited, §23-4-712.
Interstate commerce.
Provisions not to apply, §23-4-703.
Investigations.
Complaints.
State highway and transportation department.
Duty to investigate, §23-4-714.
Limitation of actions.
Actions for damages, §23-4-705.
Penalties.
Action to recover penalties, §23-10-103.
Mandamus.
Enforcement of provisions, §23-4-719.
Passengers.
Prohibited acts, §23-4-710.
Penalties, §23-10-103.
Actions to recover, §23-4-706.
Books and papers of railroad companies.
Refusal to permit examination by state highway and transportation department, §23-4-718.
Disposition of proceeds, §23-4-720.
Preferences as to services prohibited, §23-10-104.

RAILROADS —Cont'd
Discrimination —Cont'd
Rates and charges, §23-4-710.
Different lines operated by same company.
Applicability of provisions, §23-10-102.
Passes.
Free transportation for certain persons not prohibited, §23-10-107.
Prohibited, §23-10-105.
Rate sheets and tariff charges.
Furnishing state highway and transportation department, §23-4-708.
Regulation of rates and charges by state highway and transportation department, §23-4-708.
Schedules of rates.
Posting of printed schedules, §23-4-707.
Reduced rate tickets allowed, §23-4-713.
Scope of provisions, §23-4-702.
State highway and transportation department.
Books and papers of railroad companies.
Access to, §23-4-718.
Refusal to permit examination by department.
Penalties, §23-4-718.
Complaints.
Duty to investigate, §23-4-714.
Information furnished department, §23-4-717.
Investigations.
Complaints.
Duty to investigate, §23-4-714.
Rates and charges.
Regulation by, §23-4-708.
Witnesses.
Officers compelled to attend and testify, §23-10-110.
Self-incrimination no bar, §23-10-110.
Drainage of roadbed.
Requirements, §23-12-204.
Violation of provisions.
Notice, §23-12-204.
Penalty, §23-12-204.
Drunkenness.
Arrest.
Authority of conductors to arrest drunken persons and deliver to peace officers, §23-12-708.
Public places, §23-12-708.
RAILROADS —Cont'd
Drunkenness —Cont'd
Engineer or conductor drunk.
Penalty, §23-12-807.
Employees.
Bonds, surety.
Employees of carriers, §§23-16-201 to 23-16-207.
Damages.
Hours of work.
Freight trains.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Death.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Hospital facilities in state to be provided, §23-12-508.
Penalty for violations, §23-12-508.
Hours of work.
Freight trains.
Damages.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Limit on hours, §23-12-509.
Violations of provisions.
Contributory negligence no defense to injury actions, §23-12-509.
Penalty, §23-12-509.
Telephone and telegraph operators for railroads.
Limit on hours, §23-12-510.
Penalty for violations, §23-12-510.
Action to recover, §23-12-510.
Payment without deduction, §23-12-510.
Injuries.
Hospital fees.
Hospital facilities in state to be provided, §23-12-508.
Hours of work.
Freight trains.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.

RAILROADS —Cont'd
Employees —Cont'd
Liability for injury or death of employee.
Assumption of risk.
Employees not compelled to have assumed risk, §23-12-506.
Construction and interpretation.
Effect of provisions on existing laws, §23-12-502.
Contracts of employment or indemnity insurance no defense, §23-12-507.
Contributory negligence no defense, §23-12-505.
Defective equipment, §23-12-503.
Presumption of knowledge, §23-12-504.
Prima facie evidence of negligence, §23-12-504.
Definitions, §23-12-501.
Generally, §23-12-503.
Insurance.
Contracts of indemnity insurance no defense, §23-12-507.
Setoff by employer, §23-12-507.
Negligence.
Hours of work.
Freight trains.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Liability for injury or death of employee.
Generally, §§23-12-501 to 23-12-507.
Penalties.
Hospital fees.
Failure of railroad to provide hospital facilities in state, §23-12-508.
Hours of work.
Freight trains.
Violations of provisions, §23-12-509.
Telephone and telegraph operators for railroads.
Violations of provisions, §23-12-510.
Safety, §23-12-512.
Safe transportation of railroad employees by contract carriers, §§23-16-501 to 23-16-511.
Safety.
Blocks in frogs and guardrails.
Required, §23-12-512.
Penalty for violation of provisions, §23-12-512.

RAILROADS —Cont'd
Employees —Cont'd
Safety —Cont'd
Liability for injury or death of employee.
Generally, §§23-12-501 to 23-12-507.
Establishment, discontinuance, modification, etc., of service.
Findings.
Failure to comply with, §23-12-609.
Filing, §23-12-608.
Hearings on, §23-12-607.
Investigation of objects sought to be accomplished, §23-12-608.
Petitions.
Authority of transportation safety agency, §23-12-607.
Number of signatures, §23-12-610.
Reestablishment, §23-12-611.
Reestablishment of service.
Petitions, §23-12-611.
Executions.
Livestock.
Killing or injuring.
Judgments under provisions, §23-12-906.
Executors and administrators.
Corporations.
Voting of stock, §23-11-212.
Fees.
Annual fee collected from rail carriers, §23-16-104.
Carriers generally, §§23-16-101 to 23-16-106.
Corporations.
Amendment of articles of incorporation, §23-11-220.
Foreign corporations.
Fees charged foreign companies, §23-3-111.
Incorporation fees, §23-11-102.
Incorporation fees, §23-11-102.
Fences.
Removal of fences for public convenience, §23-12-308.
Notice to remove fence, §23-12-308.
Refusal to remove.
Penalty, §23-12-308.
Time allowed, §23-12-308.
Fiduciaries.
Corporations.
Voting of stock, §23-11-212.
Firearms.
Discharging firearms at cars.
Penalty, §23-12-804.
Fires and fire prevention.
Liability for fires, §23-12-913.

RAILROADS —Cont'd
Freight.
Applicability of provisions, §23-10-403.
Arrival of freight.
Notice, §23-10-421.
Construction and interpretation.
Cumulative effect of act, §23-10-405.
Damages, §23-10-304.
Perishable freight.
Cumulative effect of provisions, §23-10-404.
Damages.
Collection from agent, §23-10-304.
False affidavit as to damages.
Perjury, §23-10-304.
Treble damages on refusal to pay, §23-10-304.
Construction and interpretation, §23-10-304.
Furnishing cars for freight.
Failure to furnish, §23-10-434.
Liability of carriers.
Damage to goods in transit, §23-10-304.
Express companies, §23-10-305.
Penalty for failure to pay, §23-10-305.
Initial carrier, §23-10-303.
Perishable freight.
Failure to forward, §23-10-440.
Failure to furnish cars for, §23-10-438.
Subrogation, §23-10-303.
Violations of provisions.
Actions for damages, §23-10-431.
Limitation of actions, §23-10-431.
Definitions, §23-10-402.
Shipper, §23-10-401.
Delivery of freight, §23-10-419.
Penalty for delay, §23-10-419.
Demurrage charges.
Cars detained for fault of shipper, §23-10-417.
Failure to timely load, §23-10-416.
Failure to unload, §23-10-424.
Generally, §23-10-412.
Perishable freight, §23-10-439.
Recovery of demurrage, §23-10-430.
Refusal of freight, §23-10-428.
Discrimination, §23-4-710.
Connecting lines.
Forwarding freight over.
Preferences prohibited, §23-10-411.
Contracts.
Pooling freight or dividing revenue prohibited, §23-4-711.

RAILROADS —Cont'd
Freight —Cont'd
Discrimination —Cont'd
Drawback.
Prohibited, §§23-10-106, 23-10-410.
Long hauls.
Differentiation in compensation for long and short hauls.
Prohibited, §23-4-712.
Pooling.
Contracts for pooling freight prohibited, §23-4-711.
Prohibited, §23-10-410.
Short hauls.
Differentiation in compensation for long and short hauls.
Prohibited, §23-4-712.
Exemptions from provisions, §23-10-403.
Express offices.
Refusal to establish.
Penalty, §23-10-302.
Required in all first class cities, §23-10-302.
Failure to furnish.
Damages, §23-10-434.
Free delivery limits.
Refusal to deliver packages within.
Penalty, §23-10-302.
State highway and transportation to define, §23-10-302.
Furnishing cars for freight.
Cars of another railroad.
Liability for, §23-10-435.
Double-decked cars for sheep and hog shipments, §23-10-442.
Duty to furnish cars to shippers, §23-10-413.
Exceptions, §23-10-433.
Exchange of cars, §23-10-415.
Exception, §23-10-433.
Liability for failure to exchange, §23-10-434.
Extra pay for.
Employee demanding or receiving.
Penalty, §23-10-429.
Failure to furnish.
Gross negligence in not furnishing cars.
Penalty, §23-10-436.
Penalties, §§23-10-413, 23-10-436.
Grain, §23-10-443.
Interstate railroads, §23-10-414.
Penalties.
Failure to furnish cars, §23-10-413.
Gross negligence in not furnishing cars, §23-10-436.

RAILROADS —Cont'd
Freight —Cont'd
Furnishing cars for freight —Cont'd
Perishable freight, §23-10-438.
Request by shipper.
Definition of "shipper," §23-10-401.
Reasonable time, §23-10-432.
Return of cars, §23-10-415.
Rules and regulations, §23-10-437.
Grain.
Furnishing cars for, §23-10-443.
Liability for loss of grain on failure to furnish, §23-10-443.
Liability.
Contracts abridging liability of railroad void, §23-10-408.
Rules abridging liability of railroads void, §23-10-408.
Limitation of actions.
Damages for violations of act, §23-10-431.
Livestock or poultry.
Double-decked cars for sheep and hog shipments.
Charges.
Same charge as carload, §23-10-442.
Furnishing, §23-10-442.
Charge of half of carload on failure to furnish, §23-10-442.
Penalty for noncompliance, §23-10-441.
Preference to be given livestock, §23-10-411.
Shipper's pass, §23-10-441.
Loading.
Demurrage charges, §23-10-416.
Improper loading.
Cars detained for fault of shipper.
Demurrage, §23-10-417.
Notice, §23-10-417.
Inclement weather.
Additional free time, §23-10-425.
Perishable freight.
Time for loading, §23-10-439.
Time for, §23-10-416.
Additional free time, §23-10-416.
Misdemeanors.
Livestock or poultry.
Shipper's pass.
Noncompliance with requirement, §23-10-441.
Negligence.
Furnishing cars for freight.
Gross negligence in not furnishing cars.
Penalty, §23-10-436.

RAILROADS —Cont'd
Freight —Cont'd
Notice.
Arrival of freight, §§23-10-420, 23-10-421.
Consignees to be notified of arrival of freight, §23-10-420.
Penalty for failure to give notice, §23-10-420.
Improper loading, §23-10-417.
Refusal of freight.
Notice to consignor, §23-10-428.
Sale of unclaimed goods, §23-10-306.
Shipment to consignor's order, §23-10-422.
Penalties.
Delivery of freight.
Delay, §23-10-419.
Express companies.
Liability for loss.
Failure to repay damages, §23-10-305.
Extra pay for furnishing car to shipper.
Employee demanding or receiving, §23-10-429.
Furnishing car for freight.
Failure to furnish car for freight, §23-10-413.
Gross negligence in not furnishing cars, §23-10-436.
Livestock or poultry.
Shipper's pass.
Noncompliance with requirement, §23-10-441.
Notice to consignee of arrival of freight.
Failure to give notice, §23-10-420.
Recovery of forfeitures and charges, §23-10-430.
Recovery of penalties, §23-10-406.
Refusal to establish offices or deliver packages, §23-10-302.
Transportation of freight.
Violations of requirements, §23-10-418.
Violations of act or rules of agency, §23-10-406.
Weighing.
Noncompliance with provisions, §§23-10-444, 23-10-445.
Perishable freight.
Cumulative effect of act, §23-10-404.
Damages.
Failure to forward perishable freight, §23-10-440.
Failure to furnish cars for perishable freight, §23-10-438.

RAILROADS —Cont'd
Freight —Cont'd
Perishable freight —Cont'd
Demurrage, §23-10-439.
Forwarding, §23-10-440.
Furnishing cars for.
Duty to furnish, §23-10-438.
Loading.
Time for, §23-10-439.
Preferences, §23-10-411.
Remedies cumulative, §23-10-404.
Rates and charges.
Crushed stone, sand and gravel, §23-4-614.
Overcharge.
Penalty, §23-4-614.
Free or reduced rate transportation permitted, §23-10-409.
Short lines.
Maximum freight charge, §23-4-611.
Overcharge.
Penalty, §23-4-611.
Reduction of rates, §23-4-611.
Receipt of freight.
Duty of railroad agents, §23-10-418.
Refusal of freight.
Demurrage, §23-10-428.
Notice to consignor, §23-10-428.
Remedies cumulative, §23-10-405.
Perishable freight, §23-10-404.
Rules and regulations, §23-10-301.
Furnishing and interchange of cars used for intrastate freight, §23-10-437.
Liability.
Rules abridging liability of railroads void, §23-10-408.
Penalty for violation, §23-10-406.
Reasonable rules for transportation of freight permitted, §23-10-407.
Sale of unclaimed goods, §23-10-306.
State highway and transportation department.
Free delivery limits.
Agency to define, §23-10-302.
Furnishing and interchange of cars used for intrastate freight, §23-10-437.
Rules and regulations, §23-10-301.
Penalty for violation, §23-10-406.
Transportation of freight, §23-10-418.
Reasonable rules permitted, §23-10-407.
Time freight to be in transit, §23-10-418.
Unclaimed goods.
Sale, §23-10-306.

RAILROADS —Cont'd
Freight —Cont'd
Unloading.
Demurrage charges for failure to unload, §23-10-424.
Failure to unload.
Demurrage charges, §23-10-424.
Storage of freight after failure, §23-10-427.
Free time.
Extension of free time, §23-10-424.
Extension when consignee or consignor at distance from depot, §23-10-426.
Inclement weather, §23-10-425.
Inclement weather.
Additional free time for loading or unloading, §23-10-425.
Storage charges.
Package freight unloaded by railroad, §23-10-423.
Weighing.
Certificate of weight.
Contents, §23-10-445.
Issuance, §§23-10-444, 23-10-445.
Duties of railroad companies, §§23-10-444, 23-10-445.
Penalties.
Noncompliance with provisions, §§23-10-444, 23-10-445.
Tracks scales to be maintained at stations, §23-10-444.
Noncompliance with provisions.
Penalty, §23-10-444.
Frequency of trains.
State highway and transportation department.
Powers of department, §23-12-104.
General assembly.
Passes.
Members permitted to accept and use passes, §23-4-804.
Governor.
Passes.
Permitted to accept and use pass, §23-4-804.
Grain.
Furnishing cars for grain, §23-10-443.
Guardians.
Corporations.
Voting of stock, §23-11-212.
Hazardous substances and materials.
Transportation of hazardous materials.
Documents required, §23-12-406.
Headlights.
Candlepower requirements.
Enforcement of requirements, §23-12-402.

RAILROADS —Cont'd
Headlights —Cont'd
Candlepower requirements —Cont'd
Generally, §23-12-402.
Prosecuting attorneys.
Enforcement of provisions, §23-12-402.
Violations of requirements.
Penalty, §23-12-402.
Hearings.
Corporations.
Application for incorporation, §23-11-205.
Crossings.
Proposed road or street crossings, §23-12-304.
Hospitals.
Employees of railroads.
Facilities to be furnished, §23-12-508.
Indigent persons.
Free carriage.
Authorized, §23-4-807.
Injunctions.
Crossings.
Improper crossing of highway and railroad, §23-12-306.
Injuries.
Employees.
Hospital fees.
Hospital facilities in state to be provided, §23-12-508.
Hours of work.
Freight trains.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Liability, §23-12-902.
Contributory negligence, §23-12-907.
Restrictions on, §23-12-904.
Employees.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Legislative intent, §23-12-901.
Who may sue for personal injuries, §23-12-903.
Livestock.
Killing or injuring, §§23-12-908 to 23-12-912.
Inspections.
Crossings.
State highway commission.
Proposed road or street crossing, §23-12-304.

RAILROADS —Cont'd
Inspections —Cont'd
Safe transportation of railroad employees by contract carriers.
Inspection of vehicle, §23-16-506.
Transportation commission, §23-12-102.
Insurance.
Casualty insurance.
Railroad accidents not to be considered in automobile insurance, §23-89-302.
Employees.
Liability for injury or death of employee.
Contracts of indemnity insurance no defense, §23-12-507.
Safe transportation of railroad employees by contract carriers.
Liability insurance requirement, §23-16-509.
Special passenger excursion trains, §23-10-213.
Interstate commerce.
Discrimination.
Provisions not to apply to interstate traffic, §23-4-703.
Investigations.
Crossings.
Regulation.
State highway commission, §§23-12-1004, 23-12-1007.
Judges.
Passes.
Permitted to accept and use passes, §§23-4-804, 23-4-805.
Jurisdiction.
Crossings.
State highway commission.
Construction and location, §23-12-304.
Livestock.
Killing or injuring.
Actions for damages, §23-12-909.
Land grants in aid of railroads.
Acceptance.
Time for.
Forfeiture of land upon failure to accept, §23-11-502.
Report of failure to accept, §23-11-504.
Application for.
Forfeiture upon failure to apply, §23-11-502.
Authorized, §23-11-501.
Designation of donee, §23-11-501.
Forfeiture of lands.
Failure to apply for and accept conveyance, §23-11-502.

RAILROADS —Cont'd
Land grants in aid of railroads —Cont'd
Forfeiture of lands —Cont'd
Report, §23-11-504.
Reversion of forfeited lands to state, §23-11-503.
Municipal corporations.
Rights of way.
Sale of abandoned rights of way to municipality, §23-12-205.
Reversion of land to donor, §23-11-501.
Rights of way.
Abandoned rights of way.
Offer to sell to municipality, §23-12-205.
Taxation.
List of lands conveyed.
State land commissioner to send to county assessor for taxation, §23-11-505.
Leases.
Railroad enjoining state.
Authorized, §23-11-303.
Liability.
Damages.
Property damage, §23-12-902.
Contributory negligence, §23-12-907.
Restrictions on, §23-12-904.
Fires, §23-12-913.
Death.
Contributory negligence no complete defense, §23-12-904.
Employees.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Fires, §23-12-913.
Freight.
Contracts abridging liability of railroad void, §23-10-408.
Rules abridging liability of railroads void, §23-10-408.
Injuries, §23-12-902.
Contributory negligence, §23-12-907.
Restrictions on, §23-12-904.
Employees.
Liability for injury or death of employee, §§23-12-501 to 23-12-507.
Legislative intent, §23-12-901.
Who may sue for personal injuries, §23-12-903.

RAILROADS —Cont'd
Liability —Cont'd
Livestock.
Killing or injuring.
Generally, §§23-12-908 to 23-12-912.
Lookout.
Duty of trainmen to keep, §23-12-907.
Special passenger excursion trains, §23-10-213.
Lieutenant governor.
Passes.
Permitted to accept and use pass, §23-4-804.
Lights.
Headlights, §23-12-402.
Switches.
Colors, §23-12-408.
Requirements, §23-12-408.
Violations of provisions.
Penalty, §23-12-408.
Limitation of actions.
Discrimination.
Actions for damages, §23-4-705.
Action to recover penalty, §23-10-103.
Freight.
Damages for violations of act, §23-10-431.
Livestock.
Killing or injuring.
Actions.
Jurisdiction, §23-12-909.
Parties who may sue for stock killed, §23-12-909.
Arbitration of damages, §23-12-912.
Refusal to abide by award, §23-12-912.
Double damages upon nonpayment, §23-12-912.
Burden of proof, §23-12-910.
Damages.
Arbitration of damages, §23-12-912.
Execution for.
Levy and sale of railroad property under execution, §23-12-906.
Notice to be posted.
Double damages recoverable on failure to post, §23-12-908.
Who may sue for damages, §23-12-909.
Notice, §23-12-908.
Double damages on failure to post notice, §23-12-908.

RAILROADS —Cont'd
Livestock —Cont'd
Killing or injuring —Cont'd
Service of process upon agent of railroad company, §23-12-905.
Penalties.
Shipments of livestock or poultry.
Shipper's pass.
Noncompliance with requirement, §23-10-441.
Shipments of livestock or poultry.
Double-decked cars for sheep and hog shipments.
Charges.
Same charge as carload, §23-10-442.
Furnishing, §23-10-442.
Charge of half of carload on failure to furnish, §23-10-442.
Preference to be given livestock, §23-10-411.
Shipper's pass, §23-10-441.
Penalty for noncompliance, §23-10-441.
Lookout law, §23-12-907.
Mandamus.
Discrimination.
Enforcement of act, §23-4-719.
Monopolies.
Control of parallel or competing line.
Contracts for acquisition void, §23-11-311.
Prohibited, §23-11-311.
Municipal corporations.
Free carriage for municipalities.
Authorized, §23-4-807.
Land grants in aid of railroads.
Rights of way.
Sale of abandoned rights of way to municipality, §23-12-205.
Rights of way.
Abandoned rights of way.
Process, §23-12-206.
Sale to municipality, §23-12-205.
Transfer of ownership or responsibility, §23-12-207.
National human trafficking resource center hotline.
Posting information in stations, §23-12-614.
Negligence.
Contributory negligence.
Liability for injury or death of employee.
Contributory negligence no defense, §23-12-505.
RAILROADS —Cont'd
Negligence —Cont'd
Employees.
Hours of work.
Freight trains.
Contributory negligence no defense to injury actions when act violated, §23-12-509.
Liability for injury or death of employee.
Generally, §§23-12-501 to 23-12-507.
Fires.
Liability for fires, §23-12-913.
Freight.
Furnishing cars for freight.
Gross negligence in not furnishing cars.
Penalty, §23-10-436.
Newspapers.
Passes.
Issuance in exchange for advertising space, §23-4-806.
Notice.
Abandonment of rail lines.
Process, §23-12-206.
Crossings.
Orders of state highway commission, §23-12-304.
Dangerous conditions.
Notice to public, §23-12-103.
Drainage of roadbed.
Notice of violation, §23-12-204.
Fences.
Notice to remove fence for public convenience, §23-12-308.
Livestock.
Killing or injuring.
Notice to be posted, §23-12-908.
Stock guards.
Notice to construct, §23-12-412.
Orders.
Crossings.
State highway commission, §23-12-304.
Passengers.
Accommodations, §23-12-601.
Baggage.
Amount of baggage allowed, §23-10-209.
Excess weight.
Charge for, §23-10-209.
Noncompliance by carrier.
Damages, §23-10-209.
Penalty, §23-10-209.
Bicycles.
Transportation as baggage, §23-10-210.

RAILROADS —Cont'd
Passengers —Cont'd
Baggage —Cont'd
Damages.
Amount of baggage allowed.
Noncompliance by carrier, §23-10-209.
Injury to baggage, §23-10-211.
Defined, §23-10-209.
Excess weight.
Charge for, §23-10-209.
Injuring baggage.
Liability of carrier, §23-10-211.
Prohibited, §23-10-211.
Liability of carrier.
Period carrier liable, §23-10-212.
Penalties.
Amount of baggage allowed.
Noncompliance by carrier, §23-10-209.
Period during which carrier liable, §23-10-212.
Stage planks or trucks used to handle baggage.
Required, §23-10-211.
Discrimination.
Prohibited acts, §23-4-710.
Ejection.
Failure to pay fare, §23-4-618.
Intersection of railroads.
Transfer of passengers, §23-12-602.
Penalties.
Baggage.
Amount of baggage allowed.
Noncompliance with carrier, §23-10-209.
Rates and charges.
Ejection upon failure to pay fare, §23-4-618.
Stopping at other than regular station.
Additional charge, §23-4-616.
Transportation of passengers without tickets at regular rates, §23-4-617.
Refusal to transport passenger at appointed time.
Damages, §23-12-601.
Special passenger excursion trains.
Liability, §23-10-213.
Passes.
Advertising.
Issuance of passes in exchange for advertising space, §23-4-806.
Attorney general.
Permitted to accept and use pass, §23-4-804.

RAILROADS —Cont'd
Passes —Cont'd
General assembly.
Members permitted to accept and use passes, §23-4-804.
Government officials.
Accepting passes.
Officials permitted to accept and use passes, §§23-4-804, 23-4-805.
Definitions, §23-4-801.
Granting free passes to.
Penalty, §23-4-802.
Prohibited, §23-4-802.
Prosecuting attorney.
Fee for collection of penalty, §23-4-802.
Penalties.
Granting passes, §23-4-802.
Governor.
Permitted to accept and use pass, §23-4-804.
Judges.
Permitted to accept and use passes, §§23-4-804, 23-4-805.
Lieutenant governor.
Permitted to accept and use pass, §23-4-804.
Officer of state.
Permitted to accept and use pass, §23-4-804.
Penalties.
Government officials.
Granting of free passes to, §23-4-802.
Secretary of state.
Permitted to accept and use pass, §23-4-804.
Sheriffs.
Permitted to accept and use passes, §§23-4-804, 23-4-805.
Treasurer of state.
Permitted to accept and use pass, §23-4-804.
Penalties.
Abandonment of operations by railroad corporation without authority.
Stockholders to offer stock for sale.
Violations of provisions, §23-12-612.
Bell or whistle to be sounded at crossing.
Violations of provisions, §23-12-410.
Civil penalties.
Actions to recover, §23-10-103.
General provisions, §23-10-103.

RAILROADS —Cont'd
Penalties —Cont'd
Crossings.
Bell or whistle to be sounded at crossing.
Violations of provisions, §23-12-410.
Depots.
Failure or refusal to build depot and stop passenger trains at, §23-12-604.
Discharging firearms or throwing objects at cars, §23-12-804.
Discrimination.
Actions to recover, §23-4-706.
Books and papers of railroad companies.
Refusal to permit examination by state highway and transportation department, §23-4-718.
Disposition of revenues, §23-4-720.
Drainage of roadbed.
Violation of provision, §23-12-204.
Drunkenness.
Engineer or conductor drunk, §23-12-807.
Employees.
Hospital fees.
Failure of railroad to provide hospital facilities in state, §23-12-508.
Hours of work.
Freight trains.
Violations of provisions, §23-12-509.
Telephone and telegraph operators for railroads.
Violations of provisions, §23-12-510.
Safety, §23-12-512.
Establishment, discontinuance, modification, etc., of service.
Findings on.
Failure to comply with, §23-12-609.
Fences.
Removal of fences for public convenience.
Refusal to remove, §23-12-308.
Freight.
Delivery of freight.
Delay, §23-10-419.
Express companies.
Liability for loss.
Failure to repay damages, §23-10-305.

RAILROADS —Cont'd
Penalties —Cont'd
Freight —Cont'd
Extra pay for furnishing car to shipper.
Employee demanding or receiving, §23-10-429.
Failure to furnish cars for freight, §23-10-413.
Furnishing cars for freight.
Gross negligence in not furnishing cars, §23-10-436.
Livestock or poultry.
Shipper's pass.
Noncompliance with requirement, §23-10-441.
Notice to consignee of arrival of freight.
Failure to give notice, §23-10-420.
Recovery of forfeitures and charges, §23-10-430.
Recovery of penalties, §23-10-406.
Refusal to establish offices or deliver packages, §23-10-302.
Transportation of freight.
Violations of requirements, §23-10-418.
Violations of act or rules of agency, §23-10-406.
Weighing.
Noncompliance with provisions, §§23-10-444, 23-10-445.
Headlights.
Violation of candlepower requirements, §23-12-402.
Livestock.
Shipments of livestock or poultry.
Shipper's pass.
Noncompliance with requirement, §23-10-441.
Monopolies.
Control of parallel or competing line.
Violations of provisions, §23-11-311.
Passengers.
Baggage.
Amount of baggage allowed.
Noncompliance with carrier, §23-10-209.
Passes.
Government officials.
Granting of free passes to, §23-4-802.
Rates and charges.
Coal cars.
Switching charges.
Violations by railroad companies, §23-4-612.

RAILROADS —Cont'd
Penalties —Cont'd
Rates and charges —Cont'd
Overcharging.
Freight rates on crushed stone, sand and gravel, §23-4-614.
Freight rates on short lines, §23-4-611.
Schedule of rates.
Failure to show, §23-4-604.
Violations of tariffs or rules, §23-4-602.
Recovery of penalties, §23-12-805.
Repairs.
Cars.
Repairs to be done in state.
Violations of provisions, §23-12-407.
Failure to obey direction to repair, §23-12-103.
Reports.
Annual reports of railroads and express companies.
Failure to report, §23-11-103.
Rights of way.
Failure to maintain free from obstructions, §23-12-201.
Safe transportation of railroad employees by contract carriers, §23-16-510.
Safety.
Employees.
Blocks in frogs and guardrails.
Violation of requirement, §23-12-512.
Stock guards.
Failure to maintain stock guard, §23-12-412.
Stopping trains within town limits upon petition.
Violations of provisions, §23-12-606.
Switches.
Lights on switches.
Violations of provisions, §23-12-408.
Track motor cars.
Violation of equipment requirement, §23-12-404.
Trespassers boarding trains, §23-12-802.
Tunnels.
Automatic block signal system at tunnel.
Violations of provisions, §23-12-409.
Signboard one mile from tunnel.
Violations of provisions, §23-12-409.

RAILROADS —Cont'd
Perjury.
Freight.
Damages.
False affidavit as to damage, §23-10-304.
Petitions.
Stopping trains within town limits upon petition.
Facilities to be maintained, §23-12-606.
Generally, §23-12-606.
Mandamus to compel compliance, §23-12-606.
Violations of provisions.
Damages, §23-12-606.
Penalty, §23-12-606.
Police, §§23-12-701 to 23-12-708.
Presumptions.
Employees.
Liability for injury or death of employee.
Defective equipment.
Presumption of knowledge, §23-12-504.
Prosecuting attorneys.
Freight.
Recovery of penalties.
Fee of prosecuting attorney, §23-10-406.
Headlights.
Candle power requirements.
Enforcement, §23-12-402.
Recovery of penalties under act, §23-12-805.
Public drunkenness.
Arrests by railroad conductors, §23-12-708.
Purchase.
Railroad enjoining state.
Authorized, §23-11-303.
Rates and charges.
Bills of lading.
Charges specified in bill of lading controlling, §23-4-613.
Delivery of goods on payment of charges shown in bill of lading, §23-4-613.
Liability for refusal to deliver, §23-4-613.
Changes in rates, §§23-4-620 to 23-4-635.
Coal cars.
Switching charges, §23-4-612.
Charge allowed when coal car is furnished, §23-4-612.
Penalty for violations, §23-4-612.

RAILROADS —Cont'd
Rates and charges —Cont'd
Connecting lines.
Division of charges, §23-4-607.
Penalties for violation of provisions, §23-4-608.
Single management.
Connecting lines under one management considered one railroad, §23-4-609.
Construction and interpretation, §23-4-601.
Continuous lines.
Penalties for violation of provisions, §23-4-608.
State highway and transportation department.
Prescribing rates and fares, §23-4-606.
Through rates and fares, §23-4-606.
Discrimination, §23-4-710.
Complaints.
Hearings, §23-4-715.
Investigation, §23-4-714.
Different lines operated by same company.
Applicability of provisions, §23-10-102.
Passes.
Free transportation for certain persons not prohibited, §23-10-107.
Prohibited, §23-10-105.
Regulation of rates and charges by state highway and transportation department, §23-4-708.
Schedules of rates.
Posting of printed schedules, §23-4-707.
State highway and transportation department.
Books and papers of companies.
Access to, §23-4-718.
Freight.
Crushed stone, sand and gravel, §23-4-614.
Overcharge.
Penalty, §23-4-614.
Short lines.
Maximum freight charge, §23-4-611.
Overcharge.
Penalty, §23-4-611.
Reduction of rates, §23-4-611.
Through freight rates.
Investigation and correction by department, §23-4-610.

RAILROADS —Cont'd
Rates and charges —Cont'd
General assembly.
Reduction of railroad rates, §23-4-619.
Gravel.
Freight rates, §23-4-614.
Just and reasonable rates.
Required, §23-4-603.
Liability as to rates approved by agency, §23-4-716.
Overcharging.
Freight rates on crushed stone, sand and gravel.
Penalty, §23-4-614.
Prohibited, §23-4-605.
Short lines.
Freight rates on.
Penalty, §23-4-611.
Passengers.
Ejection upon failure to pay fare, §23-4-618.
Stopping at other than regular station.
Additional charge, §23-4-616.
Transportation of passengers without tickets at regular rates, §23-4-617.
Penalties.
Coal cars.
Switching charges.
Violations by railroad companies, §23-4-612.
Overcharging.
Freight rates on crushed stone, sand and gravel, §23-4-614.
Freight rates on short lines, §23-4-611.
Schedule of rates.
Failure to show, §23-4-604.
Violations of tariffs or rules, §23-4-602.
Rate-making procedure, §23-4-709.
Reasonable and just rates required, §23-4-603.
Reduction of railroad rates.
Legislative authority, §23-4-619.
Reduced rate tickets allowed, §23-4-713.
Sand.
Freight rates, §23-4-614.
Schedule of rates.
Open to inspection.
Penalty for failure to show schedule, §23-4-604.
Short lines.
Freight charges, §23-4-611.

RAILROADS —Cont'd
Rates and charges —Cont'd
Sleeping cars.
Adoption or adjustment of tariffs by state highway and transportation, §23-4-615.
State highway and transportation department.
Connecting lines under one management.
Power to fix rates, §23-4-609.
Continuous lines.
Rates and fares prescribed by department, §23-4-606.
Sleeping car tariffs.
Adoption or adjustment by department, §23-4-615.
Through freight rates.
Investigation and correction by department, §23-4-610.
Violations of tariffs or rules.
Penalty, §23-4-602.
Through freight rates.
Investigation and correction by state highway and transportation department, §23-4-610.
Real property.
Land grants in aid of railroads, §§23-11-501 to 23-11-505.
Receivers.
Corporations.
Abandonment of operations without authority, §23-12-613.
Repairs.
Cars.
Repairs to be done in state, §23-12-407.
Penalty for violations, §23-12-407.
Sending cars out of state to be repaired prohibited, §23-12-407.
Inspection of railroads.
State highway and transportation department, §23-12-102.
Inspection of railroads by transportation safety agency.
Directions to repair, §23-12-103.
Penalties.
Cars.
Repairs to be done in state.
Violations of provisions, §23-12-407.
Failure to obey directions to repair, §23-12-103.
Provisions cumulative, §23-12-101.
Reports.
Annual reports, §23-11-103.
Penalties, §23-11-103.

RAILROADS —Cont'd
Reports —Cont'd
Safe transportation of railroad employees by contract carriers.
Motor vehicle report at completion of each day, §23-16-506.
Rights of way.
Abandoned rights of way.
Process, §23-12-206.
Railroad to offer to sell to municipality, §23-12-205.
Transfer of ownership or responsibility, §23-12-207.
Derailment or wreck.
Clearing right of way following, §23-12-203.
Maintenance free from obstructions, §23-12-201.
Penalty for failure to comply, §23-12-201.
Weeds.
Permitting certain weeds to seed on right of way, §23-12-202.
Rules and regulations.
Crossings.
Regulation.
State highway commission, §§23-12-1004, 23-12-1007.
Safe transportation of railroad employees by contract carriers, §§23-16-501 to 23-16-511.
Access to facilities and records, §23-16-508.
Accidents.
Drug or alcohol testing of driver, §23-16-505.
Alcohol testing of driver, §23-16-505.
Certification of compliance, reliance on, §23-16-511.
Definitions, §23-16-502.
Disqualification of driver, §23-16-504.
Drug or alcohol testing, §23-16-505.
Driver qualification file, §23-16-503.
Drug testing of driver, §23-16-505.
Equipment requirements for vehicles, §23-16-507.
Inspection of vehicle, §23-16-506.
Liability insurance requirement, §23-16-509.
Limitations of on-duty time of driver, §23-16-504.
Maintenance and repair program, §23-16-507.
Motor vehicle report at completion of each day, §23-16-506.
Penalties for violations, §23-16-510.
Right to contract not impaired, §23-16-511.

RAILROADS —Cont'd
Safe transportation of railroad employees by contract carriers —Cont'd
Time records, §23-16-504.
Title of act, §23-16-501.
Safety.
Employees.
Blocks in frogs and guardrails.
Required, §23-12-512.
Penalty for violation of provisions, §23-12-512.
Liability for injury or death of employee.
Generally, §§23-12-501 to 23-12-507.
Penalties.
Employees.
Blocks in frogs and guardrails.
Violation of requirement, §23-12-512.
Sale or lease of road or property.
Authorized, §23-11-301.
Corporations.
Formation to purchase or lease railroads, §23-11-315.
Stock and stockholders.
Consent of stockholders required, §23-11-309.
Stock issued in payment.
Full paid shares, §23-11-315.
Foreign corporations.
Lessor and lessee of railroad subject to laws, §23-11-403.
Purchase or lease of state roads by, §23-11-402.
Sale or lease to connecting foreign railroad, §23-11-302.
Forfeiture of lease when not in conformity with law.
Attorney general.
Enforcement of provisions, §23-11-314.
Effect.
Return to lessor, §23-11-314.
Generally, §23-11-314.
Return to lessor, §23-11-314.
Liability of purchasing company for debts, §23-11-313.
Time limit for claims, §23-11-313.
Repair of leased property.
Forfeiture of lease for failure to repair.
Attorney general.
Enforcement of provisions, §23-11-314.
Effect.
Return to lessor, §23-11-314.
RAILROADS —Cont'd
Sale or lease of road or property —Cont'd
Repair of leased property —Cont'd
Forfeiture of lease for failure to repair —Cont'd
Generally, §23-11-314.
Schedules.
Refusal to transport passenger or property at appointed time.
Damages, §23-12-601.
Regular schedules.
Required, §23-12-601.
Secretary of state.
Passes.
Permitted to accept and use pass, §23-4-804.
Service of process.
Livestock.
Killing or injuring.
Service upon agent of railroad company, §23-12-905.
Sheriffs.
Passes.
Permitted to accept and use pass, §§23-4-804, 23-4-805.
Sleeping cars.
Rates and charges.
State highway and transportation department.
Adoption or adjustment of tariffs, §23-4-615.
Special passenger excursion trains.
Liability, §23-10-213.
State highway and transportation department.
Charters of railroad corporations.
Extension, §23-11-223.
Discrimination.
Books and papers of railroad companies.
Access to, §23-4-718.
Refusal to permit examination by department.
Penalties, §23-4-718.
Complaints.
Duty to investigate, §23-4-714.
Information to be furnished, §23-4-717.
Rates and charges.
Regulation, §23-4-708.
Enforcement of laws relating to railroads or express companies on complaint, §23-11-101.
Frequency of trains and street cars.
Powers, §23-12-104.
Hearings.
Application for incorporation, §23-11-205.

RAILROADS —Cont'd
State highway and transportation department —Cont'd
Inspection of railroads, §23-12-102.
Rates and charges.
Connecting lines under one management.
Power to fix rates, §23-4-609.
Rate-making procedure, §23-4-709.
Sleeping car tariffs.
Adoption or adjustment by department, §23-4-615.
Through freight rates.
Investigation and correction by department, §23-4-610.
Violations of tariffs or rules.
Penalty, §23-4-602.
Reports as to information regarding railroad companies, §23-11-104.
State highway commission.
Crossings.
Complaint of inadequate action or unreasonable refusal.
Action on complaint, §23-12-1005.
Complaints of unlawful delay.
Action on complaints, §23-12-1008.
Inspection of proposed road or street crossings, §23-12-304.
Investigations, §§23-12-1004, 23-12-1007.
Jurisdiction, §§23-12-1002, 23-12-1003.
Operation and movement of trains, §23-12-1006.
Jurisdiction over location and construction of crossings, §23-12-304.
Rules and regulations, §§23-12-1004, 23-12-1007.
Supervision, §23-12-301.
Stock and stockholders.
Aiding other roads by purchasing stock when intending to form connection, §23-11-304.
Stock guards.
Damages.
Failure to maintain stock guard.
Liability, §23-12-412.
Failure to maintain.
Penalty, §23-12-412.
Notice to construct, §23-12-412.
Penalties.
Failure to maintain stock guard, §23-12-412.
Required when railroad passes through enclosure, §23-12-412.
RAILROADS —Cont'd
Subrogation.
Freight.
Damages.
Liability of initial carrier, §23-10-303.
Switch connections.
Lights.
Colors, §23-12-408.
Requirements, §23-12-408.
Violations of provisions.
Penalty, §23-12-408.
Penalties.
Lights on switches.
Violations of provisions, §23-12-408.
Railroad companies to permit, §23-12-302.
Taxation.
Land grants in aid of railroads, §23-11-505.
Telecommunications.
Right of railroads to operate telegraphs and telephones, §23-17-102.
Throwing objects at cars.
Penalty, §23-12-804.
Track motor cars.
Equipment required, §23-12-404.
Penalty for violation, §23-12-404.
Penalties.
Violation of equipment requirement, §23-12-404.
Treasurer of state.
Passes.
Permitted to accept and use pass, §23-4-804.
Trespass.
Boarding trains, §23-12-802.
Trusts and trustees.
Corporations.
Voting of stock by trustee, §23-11-212.
Tunnels.
Automatic block signal system required, §23-12-409.
Penalty for violations, §23-12-409.
Penalties.
Automatic block signal system at tunnel.
Violations of provisions, §23-12-409.
Signboard one mile from tunnel.
Violations of provisions, §23-12-409.
Signboard one mile from tunnel, §23-12-409.
Penalties for violations, §23-12-409.

RAILROADS —Cont'd
Water power companies.
Right of way for railroad in connection with construction of dam.
Acquisition, §23-18-407.
Weapons.
Discharging firearms at cars.
Penalty, §23-12-804.
Weeds.
Damages.
Permitting certain weeds to seed on right of way.
Recovery of damages for maturing of weeds, §23-12-202.
Permitting certain weeds to seed on right of way.
Damages for maturing of weeds, §23-12-202.
Prohibited, §23-12-202.
Whistles.
Crossings.
Bell or whistle to be sounded at crossing, §23-12-410.
Willful interference.
Treble damages, §23-12-805.
Witnesses.
Discrimination.
Officers compelled to attend and testify, §23-10-110.
Self-incrimination no bar, §23-10-110.

RATES AND CHARGES.
Electric cooperative corporations, §§23-4-901 to 23-4-909.
Health maintenance organizations.
Evidence of coverage and charges for health care services, §23-76-112.
Insurance.
Malpractice insurance rates, §§23-67-501 to 23-67-510.
Property insurance, §§23-67-201 to 23-67-223.
Malpractice insurance rates, §§23-67-501 to 23-67-510.
Municipal corporations.
Public utilities.
Cities and towns divested of rate making power, §23-4-201.
Pipelines.
Natural gas utilities.
Determination, §23-15-104.
Property insurance, §§23-67-201 to 23-67-223.

REAL ESTATE BROKERS AND SALESPERSONS.
Banks.
Prohibition, §23-47-104.

REAL PROPERTY.
Insurance.
Investments.
Chattel mortgages, §23-63-827.
Limitations, §23-63-828.
Mortgages, §23-63-826.
Time limit for disposal of real estate, §23-63-829.
Failure to dispose of real estate, §23-63-831.
Railroads.
Land grants in aid of railroads, §§23-11-501 to 23-11-505.
Rural telecommunications cooperatives.
Mortgage, sale or disposition, §23-17-231.
Powers, §23-17-205.
Trust companies.
Investments.
Limitations, §23-51-122.

RECEIPTS.
Motor carrier act of 1955.
Documents required to be in possession of exempt motor carrier, §23-13-265.
Motor carriers, §23-13-252.

RECEIVERS.
Banks.
Appointment, §23-49-106.
Powers, §23-49-107.
Building and loan associations.
Insolvency and illegal practices.
Federal savings and loan insurance corporation acting as receiver, §23-37-706.
Continuing care providers.
Bankruptcy or receivership of provider resulting from financial difficulties.
Resident's statutory lien on real and personal property, §23-93-113.
Fraternal benefit societies.
Domestic societies.
Receivership of domestic societies.
Grounds, §23-74-606.
Procedure, §23-74-606.
Insurance.
Holding companies, §23-63-523.
Property and casualty insurance guaranty.
Duties of receiver, §23-90-116.
Money services, §23-55-808.
Railroads.
Corporations.
Abandonment of operations without authority, §23-12-613.

RECEIVERS —Cont'd
Securities regulation.
Commissioner.
Enforcement of act by injunction and ancillary remedies, §23-42-209.
Trust companies.
Appointment, §23-49-106.
Powers, §23-49-107.

RECIPROCAL INSURANCE.
Actions.
Name used in suits, §23-70-104.
Aggregate liabilities, §23-70-119.
Annual statement, §23-70-113.
Applicability of provisions, §23-70-102.
Assessments, §23-70-118.
Nonassessable policies, §23-70-120.
Time limit, §23-70-118.
Assets.
Impaired reciprocals, §23-70-124.
Subscribers' share in assets, §23-70-122.
Attorneys at law.
Bonds, surety, §23-70-110.
Action on bond, §23-70-110.
Deposit in lieu of bond, §23-70-110.
Power of attorney, §23-70-108.
Bonds, surety.
Attorneys at law, §23-70-110.
Action on bond, §23-70-110.
Deposit in lieu of bond, §23-70-110.
Certificates of authority.
Issuance, §23-70-107.
Contracts.
Modifications, §23-70-109.
Contributions to insurer, §23-70-112.
Conversions, §23-70-123.
Definitions, §23-70-101.
Distribution of savings, §23-70-121.
Financial condition.
Method of determining, §23-70-114.
Funds.
Surplus funds.
Required, §23-70-105.
Impaired reciprocals, §23-70-124.
Insuring powers of reciprocals, §23-70-103.
Judgments.
Binding nature, §23-70-111.
Subscribers liability, §23-70-117.
Liabilities.
Aggregate liability, §23-70-119.
Subscribers liability, §23-70-117.
Mergers, §23-70-123.
Names.
Used in suits, §23-70-104.

RECIPROCAL INSURANCE —Cont'd
Organization, §23-70-106.
Policies.
Modifications, §23-70-109.
Nonassessable policies, §23-70-120.
Power of attorney, §23-70-108.
Powers.
Insuring powers of reciprocals, §23-70-103.
Reports.
Annual statement, §23-70-113.
Savings.
Distribution of savings, §23-70-121.
Scope of chapter, §23-70-102.
Service of process.
Procedure, §23-70-111.
Stock and stockholders.
Subscribers' share in assets, §23-70-122.
Subscribers.
Advisory committee, §23-70-116.
Liability, §23-70-117.
Who may be subscribers, §23-70-115.
Surplus funds.
Required, §23-70-105.

RECIPROCITY.
Insurance.
Health insurance, §23-85-129.
Insurance producers.
Licensing, §23-64-516.
Reciprocal insurers, §§23-70-101 to 23-70-124.
Motor vehicle dealers.
Licenses, §23-112-312.
Securities regulation.
Commissioner.
Cooperation with other regulatory agencies, §23-42-208.

RECORDS.
Amusements, §23-89-516.
Bank department, §23-46-209.
Confidentiality, §23-46-101.
Retention, §23-46-211.
Banking board.
Confidentiality, §23-46-101.
Banks.
Confidentiality.
Bank department and banking board records, §23-46-101.
Falsification, §§23-50-106, 23-50-107.
Retention, §23-46-511.
Trust powers.
Separate books and records, §23-47-704.
Charitable bingo and raffles.
Examination and inspection, §23-114-705.

RECORDS —Cont'd
Charitable bingo and raffles —Cont'd
Excise taxes.
Reporting.
Maintenance of records to substantiate report, §23-114-603.
Gift certificates, §23-114-406.
Recordkeeping, §23-114-405.
Credit unions.
Keeping records, §23-35-611.
Fraternal benefit societies.
Certificates of authority, §23-74-301.
Greyhound racing.
Franchise holders, §23-111-511.
Amount of money wagered, §23-111-509.
Racing commission to have access, §23-111-512.
Highways.
State highway and transportation department, §23-2-212.
Open to public, §23-2-316.
Protective order, §23-2-316.
Proceedings, §23-2-418.
Horse racing.
Franchise holders, §23-110-412.
Racing commission to have access to records, §23-110-413.
Insurance.
Agents and brokers.
Keeping of records, §23-64-220.
Brokers.
Surplus lines, §23-65-313.
Burial associations.
Books and records.
Maintenance, §§23-78-117, 23-78-119.
Commissioner.
Certified copies and certificates, §23-61-107.
Examinations, §23-61-204.
Keeping, §23-61-107.
Deposits, §23-63-905.
Liability of commissioner and state, §23-63-905.
Domestic stock and mutual insurers.
Keeping of records required, §23-69-134.
Holding companies.
Confidential treatment, §23-63-517.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Rates and charges.
Filing, §23-67-218.
Malpractice insurance rates, §23-67-504.
RECORDS —Cont'd
Insurance —Cont'd
Signatures.
Electronic, electronic facsimile-transmitted or computer-readable signatures, §23-61-107.
Small employer health insurance.
Maintenance of records, §23-86-207.
Surplus lines.
Brokers to keep records, §23-65-313.
Production on order, §23-65-104.
Life settlements.
Record retention requirements, §23-81-807.
Lotteries.
Confidential information, §23-115-404.
Money services.
Records to be kept by licensees, §23-55-605.
Mortgage bankers, brokers and servicers, §23-39-509.
Public inspection, §23-39-512.
Property and casualty insurance.
Actuarial opinion law.
Access to information, §23-63-1905.
Public service commission.
Appeals.
Orders of commission, §23-2-423.
Cost of operation and maintenance, §23-2-108.
Open to public, §23-2-316.
Protective orders, §23-2-316.
Proceedings before commission, §23-2-418.
Public utilities.
Consumer utilities rate advocacy division, §23-4-307.
Railroads.
Safe transportation of railroad employees by contract carriers.
Maintenance and repair records, §23-16-507.
Recreational vehicle franchises.
Retention, §23-112-1005.
Savings and loan associations.
Hearings and decisions, §23-37-204.
Securities regulations.
Agents, §23-42-306.
Broker-dealers, §23-42-306.
Commissioner, §23-42-206.
Inspection of record, §23-42-207.
Investment advisers, §23-42-306.
Issuers, §23-42-306.
Title insurance.
Access to public records, §23-103-417.
Retention of records, §23-103-414.

RECORDS —Cont'd
Trust companies.
Confidentiality, §23-51-187.
Distinct fiduciary records, §23-51-147.

RECREATIONAL VEHICLE FRANCHISES, §§23-112-1001 to 23-112-1023.
Action to recover damages, §23-112-1022.
Area of sales responsibility, §23-112-1010.
Conditions applicable, §23-112-1010.
Defined, §23-112-1003.
Bond.
License requirement, §23-112-1005.
Change of business or corporate name.
Notification, §23-112-1006.
Change of employer.
Factory representative, §23-112-1007.
Salesperson, §23-112-1008.
Change of location.
Endorsement on license, §23-112-1006.
Change of ownership of dealer, §23-112-1015.
Civil penalties, §23-112-1020.
Coercion of dealer.
Prohibited acts, §23-112-1018.
Compensation for warranty service, §23-112-1016.
Damage to vehicle before arrival at dealership, §23-112-1017.
Dealer agreement.
Application for license accompanied by, §23-112-1005.
Defined, §23-112-1003.
Good cause for termination, cancellation, nonrenewal, §23-112-1012.
Inspection or rejection of vehicle.
Time frame, §23-112-1017.
Notice of termination, cancellation, nonrenewal, §23-112-1012.
Renewal, §23-112-1011.
Repurchase of inventory.
Termination, cancellation, nonrenewal, §23-112-1013.
Sale of remaining inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1014.
Termination, cancellation, nonrenewal, §23-112-1012.
Repurchase of inventory, §23-112-1013.
Sale of remaining inventory, §23-112-1014.

RECREATIONAL VEHICLE FRANCHISES —Cont'd
Death, incapacity or resignation of designated dealer principal, §23-112-1015.
Definitions, §23-112-1003.
Engaging in the business of buying, selling, or exchanging recreational vehicles, §23-112-1004.
Display of license upon request.
Factory representative, §23-112-1007.
Salesperson, §23-112-1008.
Enforcement, §23-112-1021.
Engaging in business without license.
Unlawful act, §23-112-1004.
Family succession.
Death, incapacity or resignation of designated dealer principal, §23-112-1015.
File with respect to licensed salespersons.
Commission to maintain, §23-112-1008.
Injunctions, §23-112-1023.
Inspection or rejection of vehicle by dealer.
Time frame included in dealer agreement, §23-112-1017.
Inventory.
Repurchase.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1013.
Sale of remaining inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1014.
Legislative findings, §23-112-1002.
Liability insurance.
Dealer to provide proof, §23-112-1005.
Licenses.
Appeal.
Revocation or suspension.
Salesperson terminated from employment, §23-112-1008.
Application, §§23-112-1004, 23-112-1005.
Denial, §23-112-1019.
Bond, §23-112-1005.
Change of location.
Endorsement on license, §23-112-1006.
Denial, §23-112-1019.
Display upon request.
Factory representative, §23-112-1007.
Salesperson, §23-112-1008.

RECREATIONAL VEHICLE FRANCHISES —Cont'd
Licenses —Cont'd
Expiration, §23-112-1009.
Fees, §23-112-1004.
Hearing.
Revocation or suspension.
Salesperson terminated from employment, §23-112-1008.
Issuance, §23-112-1006.
Permit in lieu of license.
Salesperson, §23-112-1008.
Required, §23-112-1004.
Revocation or suspension, §23-112-1019.
Monetary penalty in lieu of, §23-112-1020.
Salesperson terminated from employment, §23-112-1008.
Mediation.
Demand before bringing suit, §23-112-1022.
Orders directing compliance, §23-112-1021.
Penalties in lieu of revocation or suspension of license, §23-112-1020.
Permit in lieu of license.
Salesperson, §23-112-1008.
Records.
Retention, §23-112-1005.
Repair of vehicle damaged before arrival at dealership, §23-112-1017.
Repurchase of inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1013.
Retention of records, §23-112-1005.
Sale of business resulting in change of dealer ownership, §23-112-1015.
Sale of remaining inventory.
Termination, cancellation, nonrenewal of dealer agreement, §23-112-1014.
Termination of employment.
Salesperson.
Report by employer to commission, §23-112-1008.
Title of act, §23-112-1001.
Unlawful acts, §23-112-1004.
Warranty claims.
Approval or disapproval by warrantor, §23-112-1016.
Warranty obligation, §23-112-1016.
Warranty parts.
Reimbursement to dealer, §23-112-1016.

RECREATIONAL VEHICLE FRANCHISES —Cont'd
Warranty service.
Compensation, §23-112-1016.

RECREATIONAL VEHICLES.
Dealers, §§23-112-1001 to 23-112-1023.
Defined, §23-112-1003.
Franchises, §§23-112-1001 to 23-112-1023.
Sales.
Dealers, §§23-112-1001 to 23-112-1023.
Special events, §§23-112-901 to 23-112-905.
Authority to waiver relevant market area and rules, §23-112-905.
Definitions, §23-112-902.
Economic impact statements, §23-112-903.
Public policy, §23-112-901.
Significant positive economic impact determinations, §23-112-904.
Statements of estimated positive economic impact, §23-112-903.

REGISTERED AGENTS.
Foreign or alien insurers and domestic reciprocal insurers, §§23-63-301 to 23-63-304.

REGISTRATION.
Motor carriers.
Fee, §23-13-235.

REINSURANCE.
Approval, §23-62-205.
Captive insurance companies, §23-63-1611.
Credit, allowance of, §23-62-204.
Domestic ceding insurers, §§23-62-305, 23-62-306.
Credit for reinsurance, §§23-62-301 to 23-62-308.
Applicability of act, §23-62-301.
Credit allowed to domestic ceding insurers, §§23-62-305, 23-62-306.
Purpose of act, §23-62-302.
Qualified United States financial institution defined, §23-62-307.
Report of funds withheld under reinsurance treaties, §23-62-303.
Right of commissioner to examine agreements, §23-62-304.
Title of act, §23-62-301.
Delinquency proceedings.
Reinsurer's liability, §23-68-133.
Domestic stock and mutual insurers.
Assumption reinsurance, §§23-69-149, 23-69-150.
Exception to provisions, §23-62-201.

REINSURANCE —Cont'd
Foreign trade insurance.
Exception to provisions, §23-62-201.
Life and health insurance guaranty association.
Assumption by association, §23-96-110.
Liability to pay covered reinsured claims, §23-62-204.
Limits of risk, §23-62-202.
Mutual assessment life and disability insurers.
Bulk reinsurance, §23-72-119.
Notice, §23-62-205.
Restrictions on.
Limits of risk, §23-62-202.
Rules and regulations, §23-62-203.
Wet marine insurance.
Exception to provisions, §23-62-201.

REINSURANCE INTERMEDIARIES.
Books and records.
Intermediary brokers, §23-62-406.
Contract provisions required.
Intermediary brokers, §23-62-405.
Intermediary managers, §23-62-408.
Definitions, §23-62-402.
Examination authority, §23-62-411.
General provisions, §§23-62-401 to 23-62-413.
Insurers duties.
Intermediary broker services, §23-62-407.
Intermediaries.
Access to records, §23-62-411.
Intermediary brokers.
Books and records, §23-62-406.
Insurers duties, §23-62-407.
Intermediary managers.
Prohibited acts, §23-62-409.
Reinsurers duties, §23-62-410.
Required contract provisions, §23-62-408.
Liabilities, §23-62-412.
Licensure, §23-62-404.
Out of state licenses, §23-62-404.
Penalties, §23-62-412.
Qualified United States financial institution defined, §23-62-403.
Regulations, §23-62-413.
Reinsurers duties.
Intermediary managers, §23-62-410.
Rules, §23-62-413.
Short title, §23-62-401.
Submanagers prohibited, §23-62-409.
Title of act, §23-62-401.

RELEASE.
Savings and loan associations.
Validity of release or acquittance by officers of corporation or association, §23-37-510.

RENEWABLE ENERGY DEVELOPMENT, §§23-18-601 to 23-18-604.
Authority of public service commission, §23-18-604.
Definitions, §23-18-603.
Legislative findings and declaration, §23-18-602.
Net-metering equipment.
Requiring installation, §23-18-604.
Short title, §23-18-601.

RENT.
Lottery retailers.
Rent based on percentage of retail sales.
Compensation from lottery considered in computing rental payment, §23-115-606.

RENTAL VEHICLES.
Lessors.
Unlawful practices, §23-112-404.

REPLEVIN.
Bonds, surety.
Exemption for banks, §23-48-106.
Financial institutions.
Surety bond exemption, §23-32-305.

REPORTS.
Attorneys at law.
Legal insurance, §§23-91-215, 23-91-227.
Exempt persons, §23-91-206.
Automobile clubs or associations.
Annual report, §23-77-109.
Aviation.
Air commerce.
Carriers, §23-14-125.
Bank department.
Commissioner's reports, §23-46-210.
Monthly financial reports, §23-46-209.
Banks.
Call for reports, §23-46-501.
Changes in chief executive officer or director, §23-46-512.
Examinations, §23-46-506.
Examiners.
Falsification of report, §23-50-109.
Failure to make, §23-46-510.

REPORTS —Cont'd
Banks —Cont'd
False reports by commissioner or examiner, §23-50-108.
Interstate mergers and branching, §23-48-907.
Captive insurance companies, §23-63-1607.
Credit unions.
Examination by state credit union supervisor, §23-35-203.
False reports about credit union.
Penalty, §23-35-805.
Penalty for failure to file, §23-35-204.
Fraternal benefit societies.
Required reports, §23-74-602.
Failure to file.
Penalties, §23-74-602.
Health maintenance organizations.
Annual report, §23-76-113.
Filings and reports as public documents, §23-76-128.
Information to enrollees, §23-76-114.
Medical information.
Confidentiality, §23-76-129.
Quarterly reports, §23-76-113.
Highways.
State highway and transportation department.
Railroad companies.
Report as to information regarding, §23-11-104.
Hospital and medical service corporations.
Annual reports, §23-75-114.
Quarterly reports, §23-75-114.
Insurance.
Brokers.
Surplus lines, §23-65-314.
Burial associations.
Semiannual reports, §23-78-120.
Captive insurance companies, §23-63-1607.
Commissioner.
Annual report, §23-61-112.
Health insurance fraud, §23-61-116.
Examinations, §23-61-205.
Malpractice, study and report on insurance rates, §23-61-114.
Companies.
Annual statement and other information, §23-63-216.
Credit life and health insurance.
Claims, §23-87-115.
Delinquency proceedings.
Petition and report for assessment, §23-68-130.

REPORTS —Cont'd
Insurance —Cont'd
Fraudulent insurance acts, §§23-66-505 to 23-66-507.
Insurance producers.
Reports to commissioner, §23-64-517.
Legal insurance.
Annual report, §23-91-215.
Exempt persons, §23-91-206.
Public documents, §23-91-227.
Life and health insurance guaranty association.
Board of directors.
Annual report, §23-96-109.
Material transactions disclosures, §23-63-1402.
Minimum basic benefit policies.
Requirements for insurers, §23-98-111.
Property and casualty insurance guaranty.
Advisory association, §23-90-109.
Rates and charges.
Filing, §23-67-218.
Malpractice insurance rates, §23-67-504.
Reciprocal insurers.
Annual statement, §23-70-113.
Risk management.
Annual reports, §23-61-610.
Information reported to manager, §23-61-609.
Surplus lines.
Independently procured coverages, §23-65-103.
Lifeline individual verification effort corporation.
Annual report, §23-16-413.
Life settlements.
Reporting by providers, §23-81-806.
Reporting of fraudulent life settlement acts, §23-81-814.
Lotteries.
Arkansas lottery commission.
Compulsive gambling disorder, treatment and education programs, §23-115-410.
Director's reporting duties, §23-115-302.
Financial and other reports by commission, §23-115-206.
Money services.
Confidentiality of information filed with commissioner, §23-55-607.
Money laundering reports, §23-55-606.
Reports of licensees, §23-55-603.

REPORTS —Cont'd
Mortgage bankers, brokers and servicers.
Annual report of activity.
Renewal, §23-39-506.
Quarterly reports.
Licensees' duties, §23-39-510.
Public service commission.
Annual report to governor, §23-2-315.
Public utilities.
Annual reports, §23-2-308.
Environmental and economic protection.
Forecasts of loading and resources, §23-18-529.
Rate applications.
Reports on status of, §23-4-420.
Special reports, §23-2-308.
Railroads.
Annual reports, §23-11-103.
Safe transportation of railroad employees by contract carriers.
Motor vehicle report at completion of each day, §23-16-506.
Risk-based capital act.
Generally, §§23-63-1301 to 23-63-1316.
Risk-based capital requirements for health organizations.
Generally, §23-63-1501.
Securities regulations.
Agents, §23-42-306.
Broker-dealers, §23-42-306.
Investment advisers, §23-42-306.
Issuers, §23-42-306.
Telecommunications.
Universal service list of requirements, recommended changes, §23-17-404.
Trust companies.
Apparent crimes, §23-51-149.
Offices, §23-51-181.
Statements of condition and income, §23-51-186.
Voluntary liquidation, §23-51-159.

REPOSSESSION OF PERSONAL PROPERTY.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

RESIDENCY.
Lottery commission.
Qualifications of members, §23-115-203.

RESIDENTIAL EARTHQUAKE INSURANCE.
Arkansas earthquake authority act, §§23-102-101 to 23-102-119.

RESPIRATORY CARE PRACTITIONERS.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

RESTITUTION.
Funeral benefits.
Sale of prepaid benefits, §23-40-106.
Insurance.
Fraudulent insurance acts, §23-66-512.
Securities regulation.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.

RETALIATION.
Insurance companies.
Retaliation for foreign taxes, fees, etc., §23-63-102.
Retaliation for unjustified refusal to permit business because of similar name, §23-63-103.

REVERSE MORTGAGE PROTECTION ACT, §§23-54-101 to 23-54-109.

RIGHT OF ENTRY.
Highways.
State highway and transportation department, §§23-2-310, 23-2-311.
Motor carriers.
State highway and transportation department, §23-13-255.
Public service commission, §§23-2-310, 23-2-311.
Telecommunications.
Construction purposes, §23-17-104.

RIGHTS OF WAY.
Railroads.
Abandoned rights of way.
Process, §23-12-206.
Railroad to offer to sell to municipality, §23-12-205.
Transfer of ownership or responsibility, §23-12-207.
Derailment or wreck.
Clearing right of way following, §23-12-203.
Maintenance free from obstructions, §23-12-201.
Penalty for failure to comply, §23-12-201.

RIGHTS OF WAY —Cont'd
Railroads —Cont'd
Weeds.
Permitting certain weeds to seed on right of way, §23-12-202.
Telecommunications.
Condemnation upon failure to secure, §23-17-103.

RISK-BASED CAPITAL, §§23-63-1301 to 23-63-1316.
Appeals.
Penalties for violations, §23-63-1314.
Health organizations, §23-63-1513.
Applicability of provisions.
Exemptions, §23-63-1310.
Authorized control level events.
Defined, §§23-63-1302, 23-63-1306.
Generally, §23-63-1306.
Citation of act.
Short title, §23-63-1301.
Company action level events.
Defined, §23-63-1302.
Generally, §23-63-1304.
Confidentiality of information.
RBC plans, §23-63-1309.
RBC reports, §23-63-1309.
Definitions, §23-63-1302.
Fines, §23-63-1314.
Health organizations, §23-63-1513.
Foreign insurers.
Defined, §23-63-1302.
General provisions, §23-63-1311.
Health organizations, requirements, §§23-63-1501 to 23-63-1513.
Applicability of provisions.
Exemptions, §23-63-1509.
Authorized control level event, §23-63-1505.
Company action level event, §23-63-1503.
Confidentiality of information, §23-63-1508.
Definitions, §§23-63-1501, 23-63-1503 to 23-63-1506.
Foreign health organizations, §23-63-1510.
Defined, §23-63-1501.
Hearings, §23-63-1507.
Immunity.
Insurance commissioner and employees of insurance department, §23-63-1511.
Mandatory control level event, §23-63-1506.
Notices to insurers, §23-63-1512.
Penalties for violations of act, §23-63-1513.

RISK-BASED CAPITAL —Cont'd
Health organizations, requirements —Cont'd
RBC plans.
Confidentiality, §23-63-1508.
Defined, §23-63-1501.
RBC reports.
Adjusted RBC report.
Defined, §23-63-1501.
Confidentiality, §23-63-1508.
Defined, §23-63-1501.
Foreign health organizations, §23-63-1510.
General provisions, §23-63-1502.
Regulatory action level event, §23-63-1504.
Rules and regulations, §23-63-1509.
Supplemental nature of provisions, §23-63-1509.
Hearings.
Confidential department hearings upon happenings of certain events, §23-63-1308.
Immunity.
Employees of insurance department.
Immunity from actions, §23-63-1312.
Mandatory control level events.
Defined, §§23-63-1302, 23-63-1307.
Generally, §23-63-1307.
Notices to insurers, §23-63-1316.
Penalties.
Violations of act, §23-63-1314.
Health organizations, §23-63-1513.
RBC plans.
Company action level events, §23-63-1304.
Confidentiality of information, §23-63-1309.
Defined, §23-63-1302.
Regulatory action level events, §23-63-1305.
RBC reports.
Confidentiality of information, §23-63-1309.
Defined, §23-63-1302.
Foreign insurers, §23-63-1311.
General provisions, §23-63-1303.
Regulatory action level events.
Defined, §§23-63-1302, 23-63-1305.
Generally, §23-63-1305.
Reports.
RBC reports.
Defined, §23-63-1302.
Generally, §23-63-1303.
Revocation of insurer's license.
Violations of provisions, §23-63-1314.
Health organizations, §23-63-1513.

RISK-BASED CAPITAL —Cont'd
Rules and regulations.
Adoption by commissioner, §§23-63-1310, 23-63-1313.
Supplemental nature of provisions, §23-63-1310.
Suspension of insurer's license.
Violations of provisions, §23-63-1314.
Health organizations, §23-63-1513.
Title of act, §23-63-1301.
Total adjusted capital.
Comparison to RBC levels.
Publication prohibited, §23-63-1309.
Defined, §23-63-1302.
Use of information in rate making.
Prohibited, §23-63-1309.
Violations of act, §23-63-1314.
Health organizations, §23-63-1513.

RISK MANAGEMENT.
Annual report.
Manager to file, §23-61-610.
Authorization to procure insurance.
Contents, §23-61-606.
Written authorization by manager, §23-61-606.
Bids and bidding.
Procurement of insurance or surety bonding, §23-61-606.
Bonds, surety.
Procurement of insurance or surety bonding, §23-61-606.
Citation of act, §23-61-606.
Definitions, §23-61-603.
Division.
Creation, §23-61-604.
Emergencies.
Procurement of insurance or surety bonding under emergency conditions, §23-61-606.
Legislative intent, §23-61-602.
Limitation, §23-63-701.
Manager.
Annual report.
Filing, §23-61-610.
Information reported to manager, §23-61-609.
Promulgation of rules and regulations, §23-61-607.
Request for advice and assistance of manager, §23-61-608.
Written authorization to procure insurance, §23-61-606.
Procurement of insurance.
Emergency conditions, §23-61-606.
Written authorization by manager, §23-61-606.
Purpose of subchapter, §23-61-602.

RISK MANAGEMENT —Cont'd
Reports.
Information reported to manager, §23-61-609.
Manager to file, §23-61-610.
Request for advice and assistance of manager, §23-61-608.
Risk manager.
Appointment, §23-61-605.
Defined, §23-61-603.
Powers, §23-61-605.
Rules and regulations.
Promulgation by manager, §23-61-607.
Short title, §23-61-601.
State purchasing director.
Limitation on jurisdiction, §23-61-606.

RISK OF LOSS.
Risk management defined, §23-61-603.

RISK RETENTION AND PURCHASING GROUPS.
Agents.
Licenses, §§23-94-211, 23-94-213.
Brokers.
Licenses, §§23-94-211, 23-94-213.
Certificates of registration.
Domestic risk retention groups.
Requirements, §23-94-204.
Foreign risk retention groups.
Requirements, §23-94-205.
Purchasing groups, §23-94-208.
Citation of act.
Short title, §23-94-201.
Commissioner.
Administrative and procedural authority regarding, §23-94-212.
Defined, §23-94-203.
Rules and regulations, §23-94-215.
Compulsory associations, §23-94-206.
Definitions, §23-94-203.
Domestic risk retention groups.
Certificates of registration.
Requirements, §23-94-204.
Plan of operation or feasibility study.
Required, §23-94-204.
Statements.
Filing, §23-94-204.
Examinations.
Foreign risk retention groups, §23-94-205.
Foreign risk retention groups.
Certificates of registration.
Requirements, §23-94-205.
Examinations, §23-94-205.
Penalties, §23-94-205.
Plan of operation or feasibility study.
Required, §23-94-205.

RISK RETENTION AND PURCHASING GROUPS —Cont'd
Foreign risk retention groups —Cont'd
Service of process.
Designation of commissioner as agent for, §23-94-205.
Statements.
Filing, §23-94-205.
Trade practices act.
Compliance with act, §23-94-205.
Injunctions.
Authority of commissioner, §23-94-212.
United States district court.
Binding effect of orders issued in, §23-94-214.
Liability insurance.
Restrictions on insurance purchased by purchasing groups, §23-94-209.
Licenses.
Agents, §§23-94-211, 23-94-213.
Brokers, §§23-94-211, 23-94-213.
Notice.
Foreign risk retention groups.
Notice to purchasers, §23-94-205.
Purchasing groups.
Requirements, §23-94-208.
Plan of operation or feasibility study.
Defined, §23-94-203.
Domestic risk retention groups.
Required, §23-94-204.
Foreign risk retention groups.
Required, §23-94-205.
Privilege taxes, §23-94-210.
Purchasing groups.
Certificates of registration, §23-94-208.
Compulsory associations, §23-94-206.
Exemption from certain laws, §23-94-207.
Notice.
Requirements, §23-94-208.
Restrictions on insurance purchased by, §23-94-209.
Service of process.
Designation of commissioner as agent, §23-94-208.
Purposes of provisions, §23-94-202.
Registration.
Certificates of registration.
Domestic risk retention groups.
Requirements, §23-94-204.
Foreign risk retention groups.
Requirements, §23-94-205.
Purchasing groups, §23-94-208.
Rules and regulations.
Commissioner, §23-94-215.

RISK RETENTION AND PURCHASING GROUPS —Cont'd
Service of process.
Foreign risk retention groups.
Designation of commissioner as agent for, §23-94-205.
Purchasing groups.
Designation of commissioner as agent, §23-94-208.
Subpoenas.
Authority of commissioner, §23-94-212.
Taxation, §23-94-210.
Title of act.
Short title, §23-94-201.
Trade practices act.
Foreign risk retention groups.
Compliance with act, §23-94-205.

RISK-SHARING PLANS FOR PROPERTY AND CASUALTY INSURANCE, §§23-95-101 to 23-95-108.

RURAL ELECTRIFICATION CORPORATIONS, §§23-4-1101 to 23-4-1107, 23-18-301 to 23-18-331.

RURAL HEALTH CLINICS.
Any willing provider law enforcement.
Health care provider defined to include prosthetists, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

RURAL RISK UNDERWRITING ASSOCIATION.
Association.
Defined, §23-88-302.
Commissioner.
Defined, §23-88-302.
Plan.
Submission to commissioner, §23-88-305.
Rules and regulations, §23-88-308.
Companies.
Insurer, §23-88-302.
Declaration of legislature, §23-88-301.
Definitions, §23-88-302.
General provisions, §§23-88-301 to 23-88-309.
Governing board, §23-88-304.
Appointment of members, §23-88-304.
Assessments.
Authorization to make, §23-88-306.
Composition, §23-88-304.
Number of members, §23-88-304.
Plan.
Duties as to plan, §23-88-305.

RURAL RISK UNDERWRITING ASSOCIATION —Cont'd
Governing board —Cont'd
Terms of members, §23-88-304.
Legislative intent, §23-88-301.
Liability of plan participants, §23-88-307.
Membership, §23-88-303.
Person.
Defined, §23-88-302.
Plan, §23-88-303.
Appeals, §23-88-309.
Contents, §23-88-306.
Establishment of underwriting standards, §23-88-306.
Requirements of plan, §23-88-306.
Submission to commissioner, §23-88-305.
Policies.
Appeals, §23-88-309.
Premiums.
Net direct written premiums.
Certification of aggregate by commissioners, §23-88-308.
Defined, §23-88-302.
Rules and regulations.
Commissioner to have authority to promulgate, §23-88-308.
Standards for underwriting.
Plan to establish, §23-88-306.

RURAL TELECOMMUNICATIONS COOPERATIVES.
Acquire.
Defined, §23-17-202.
Acquisition of another cooperative, §23-17-242.
Actions.
Indemnification of directors, officers, employees or agents, §23-17-238.
Limitation of actions.
Suits against telecommunications companies or cooperatives, §23-17-237.
Power to sue and be sued in corporate name, §23-17-205.
Articles of incorporation.
Amendments, §23-17-211.
Fees for filing articles, §23-17-226.
Contents, §23-17-209.
Enumeration of corporate powers unnecessary, §23-17-209.
Execution, §23-17-210.
Fees, §23-17-226.
Filing, §23-17-210.
Recording, §23-17-210.
Assets.
Dissolution.
Disposition upon dissolution, §23-17-225.

RURAL TELECOMMUNICATIONS COOPERATIVES —Cont'd
Board.
Actions taken without board meeting, §23-17-239.
Bylaws, §23-17-218.
Powers of board as to bylaws, §23-17-214.
Compensation, §23-17-218.
Composition, §23-17-218.
Conflicts of interest, §23-17-239.
Defined, §23-17-202.
Elections, §23-17-219.
Employees, §23-17-221.
Indemnification of directors, officers, employees or agents, §23-17-238.
Insurance.
Purchasing on behalf of directors, officers, employees or agents, §23-17-238.
Meetings, §23-17-220.
Actions taken without board meeting, §23-17-239.
Waiver of notice, §23-17-223.
Officers, §23-17-221.
Qualifications of directors, §23-17-218.
Quorum of directors, §23-17-220.
Standards of conduct for directors, §23-17-239.
Terms of office, §23-17-219.
Vacancies, §23-17-219.
Bylaws.
Disposition of revenue.
Provisions for, §23-17-228.
Division of territory into two or more districts, §23-17-214.
Powers of board of directors, §23-17-214.
Capital credits, unclaimed, §23-17-240.
Certificate of incorporation.
Evidence.
Effect of issuance, §23-17-212.
Citation of act, §23-17-201.
Conflicts of interest.
Board of directors, §23-17-239.
Connecting companies or cooperatives.
Liabilities, §23-17-235.
Consolidation.
Agreement, §23-17-224.
Articles of consolidation.
Execution, §23-17-224.
Filing fees, §23-17-226.
Authority to consolidate, §23-17-224.
Liabilities of consolidated cooperatives, §23-17-224.

RURAL TELECOMMUNICATIONS COOPERATIVES —Cont'd
Consolidation —Cont'd
Public service commission.
Approval required, §23-17-224.
Construction standards, §23-17-236.
Debts.
Nonliability of members and shareholders, §23-17-233.
Definitions, §23-17-202.
Dissolution.
Assets.
Disposition, §23-17-225.
Authorized, §23-17-225.
Certificate of dissolution.
Execution, §23-17-225.
Filing fees, §23-17-226.
Districts.
Division of territory into two or more districts, §23-17-214.
Elections.
Board of directors, §23-17-219.
Eminent domain.
Powers, §23-17-205.
Evidence.
Certificate of incorporation, §23-17-212.
Executive committee.
Election, §23-17-222.
Responsibilities, §23-17-222.
Exemptions from taxation, §23-17-230.
Federal agencies.
Defined, §23-17-202.
Fees.
Enumerated, §23-17-226.
Membership fees, §23-17-216.
Incorporators.
Numbers, §23-17-207.
Organizational meeting, §23-17-213.
Indemnification.
Directors, officers, employees or agents, §23-17-238.
Insurance.
Directors, officers, employees or agents.
Purchasing on behalf of, §23-17-238.
Jurisdiction.
Public service commission, §23-17-206.
Leases.
Authority of board, §23-17-231.
Liability.
Connecting companies or cooperatives, §23-17-235.
Debts of cooperatives.
Nonliability of members and shareholders, §23-17-233.

RURAL TELECOMMUNICATIONS COOPERATIVES —Cont'd
Liens.
After acquired property, §23-17-232.
Limitation of actions.
Suits against telecommunications companies or cooperatives, §23-17-237.
Lines and facilities.
Construction standards, §23-17-236.
Meetings.
Annual meetings, §23-17-217.
Directors' meetings, §23-17-220.
Actions taken without board meeting, §23-17-239.
Members, §23-17-217.
Notice of members meetings, §23-17-217.
Organizational meeting, §23-17-213.
Quorum of members, §23-17-217.
Special meetings, §23-17-217.
Voting by members, §23-17-217.
Waiver of notice, §23-17-223.
Members.
Cancellation of memberships, §23-17-216.
Debts of cooperatives.
Nonliability, §23-17-233.
Defined, §23-17-202.
Fees, §23-17-216.
Meetings, §23-17-217.
Qualifications, §23-17-215.
Quorum, §23-17-217.
Voting, §23-17-217.
Mortgages.
Power to mortgage property, §23-17-231.
Recordation, §23-17-232.
Municipal corporations.
Municipalities defined, §23-17-202.
Names.
Prohibition of use of words "telecommunications cooperative" or "telephone cooperative," §23-17-208.
Nonprofit operation, §23-17-228.
Notice.
Meetings.
Members meetings, §23-17-217.
Waiver of notice, §23-17-223.
Organizational meeting, §23-17-213.
Waiver of notice of meetings, §23-17-223.
Obligations.
Defined, §23-17-202.
Opting out of underground damage coverage, §23-17-241.
Organizational meetings, §23-17-213.

RURAL TELECOMMUNICATIONS COOPERATIVES —Cont'd
Personal property.
Powers, §23-17-205.
Persons.
Defined, §23-17-202.
Powers.
Generally, §23-17-205.
Public service commission.
Commission defined, §23-17-202.
Consolidation.
Approval of commission required, §23-17-224.
Jurisdiction, §23-17-206.
Purpose, §23-17-204.
Qualifications of members, §23-17-215.
Quorum.
Board of directors, §23-17-220.
Real property.
Mortgage, pledge or other disposition, §23-17-231.
Powers, §23-17-205.
Revenues.
Bylaws.
Provisions for disposition, §23-17-228.
Use, §23-17-229.
Rural areas.
Defined, §23-17-202.
Salaries.
Directors, §23-17-218.
Seals and sealed instruments.
Power to adopt and use corporate seal, §23-17-205.
Short title of act, §23-17-201.
Standards of conduct for directors, §23-17-239.
State agencies.
Defined, §23-17-202.
Stock, unclaimed, §23-17-240.
Taxation.
Exemptions, §23-17-230.
Telecommunications companies.
Defined, §23-17-202.
Telecommunication services.
Defined, §23-17-202.
Furnishing to rural areas.
Purposes of cooperatives, §23-17-204.
Telecommunications regulatory reform, §§23-17-401 to 23-17-418.
Title of act.
Short title, §23-17-201.
Unclaimed capital credits and stock, §23-17-240.
Underground damage coverage opted-out, §23-17-241.

RURAL TELECOMMUNICATIONS COOPERATIVES —Cont'd
Use of revenues, §23-17-229.
Voting.
Members, §23-17-217.

S

SAFE DEPOSIT BOXES, §§23-47-901 to 23-47-906.
Adverse claims to contents, §23-47-905.
Liability of bank for losses, §23-47-901.
Limitation on right of access.
Compliance with security procedures, §23-47-904.
Minors.
Leases to minors, §23-47-903.
Multiple-party leases, §23-47-902.
Nonpayment of rent, §23-47-906.
Remedies.
Nonpayment of rent, §23-47-906.
Security procedures.
Compliance required, §23-47-904.

SAFE TRANSPORTATION OF RAILROAD EMPLOYEES BY CONTRACT CARRIERS, §§23-16-501 to 23-16-511.

SAFETY.
Amusement ride and attraction safety generally, §§23-89-501 to 23-89-518.
Carriers.
Requirements, §23-3-113.
Pipelines, §§23-15-201 to 23-15-217.
Public utilities.
Requirements, §23-3-113.

SAFETY RESPONSIBILITY, MOTOR VEHICLES.
Insurance.
College graduates.
Premium reduction for, §23-89-210.
Underinsured motorists, §23-89-209.
Uninsured motorists.
Casualty insurance.
Bodily injury coverage, §23-89-403.
Insurers' insolvency protection, §23-89-402.
Property damage coverage, §23-89-404.
Subrogation of insurer, §23-89-405.
Uninsured motorists defined, §23-89-401.

SALARIES.
Bank department.
Staff, §23-46-206.

SALARIES —Cont'd
Lottery commission.
Employees of commission, §23-115-305.
Special allowances, §23-115-306.
Public service commission.
Assistant general counsel, §23-2-106.
Payment, §23-2-110.
Time of payment, §23-2-111.
Rural telecommunications cooperatives.
Directors, §23-17-218.

SALES.
Motorcycles.
Special motorcycle events, §§23-112-801 to 23-112-806.
Motor vehicles.
Used motor vehicle buyers protection, §§23-112-601 to 23-112-617.
Trust companies.
Engaging in commerce prohibited, §23-51-127.

SAVINGS AND LOAN ASSOCIATIONS.
Accounts and accounting.
Claims.
Conflicting claims as to accounts, §23-37-506.
Deceased nonresidents, §23-37-504.
Dividends on savings accounts, §23-37-403.
Additional provisions to coincide with federal associations, §23-37-403.
Fiduciaries' savings accounts, §23-37-503.
Initial subscriptions to savings accounts in permanent stock associations, §23-37-305.
Insurance of accounts, §23-37-308.
Lien on savings account of borrower, §23-37-509.
Minors.
Savings accounts of minors, §23-37-501.
Powers of attorney on savings accounts, §23-37-508.
Practices generally, §23-37-211.
Savings accounts in the names of two or more persons, §23-37-502.
Withdrawals from savings accounts.
Procedure, §23-37-505.
Restrictions on withdrawals, §23-37-505.
Actions.
Damages.
Limitation on right to recover damages from association, §23-37-507.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Agents.
Foreign associations, §23-37-602.
Amendments.
Charter and bylaws, §23-37-312.
Appeals.
Decision or order of board, §23-37-214.
Appeal to supreme court, §23-37-214.
Applicability of provisions.
Act controlling, §23-37-102.
Business corporation act, §23-37-105.
Federal associations, §23-37-106.
Audits.
Annual audit and examination procedure, §23-37-210.
Board.
Enforcement of chapter, §23-37-201.
Bonds, surety.
Brokers.
Licenses, §23-37-603.
Directors, officers and employees, §23-37-314.
Boundaries.
Foreign associations.
Operation in city on state line, §23-37-601.
Branch offices.
Approval or denial, §23-37-404.
Opening, §23-37-404.
Brokers' licenses.
Application, §23-37-603.
Bonds, surety, §23-37-603.
Contents, §23-37-603.
Fees, §23-37-603.
Forms, §23-37-603.
Qualifications for license, §23-37-603.
Termination, §23-37-603.
Business corporation act.
Applicability of provisions, §23-37-105.
Bylaws.
Amendments, §23-37-312.
Contents, §23-37-307.
Generally, §23-37-307.
Capital development companies.
Investment in and loans to, §23-32-202.
Capital stock.
Issuance, §23-37-303.
Par value, §23-37-303.
Retirement, §23-37-303.
Certificates of deposit.
Agency designations, §§23-32-501 to 23-32-509.
Charter.
Amendments, §23-37-312.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Charter —Cont'd
Application, §23-37-301.
Approval, §23-37-310.
Hearings, §23-37-309.
Refusal to charter application, §23-37-310.
Approval of application for charter, §23-37-310.
Commencement of business.
Failure to commence business.
Forfeiture of charter, §23-37-311.
Contents, §23-37-301.
Form, §23-37-301.
Hearings.
Applications, §23-37-309.
Oaths, §23-37-301.
Refusal to charter application, §23-37-310.
Claims.
Conflicting claims as to account.
Withholding payment of withdrawals, §23-37-506.
Commencement of business.
Charters.
Failure to commence business.
Forfeiture of charter, §23-37-311.
Failure to commence business, §23-37-311.
Commissions.
Sale of stock, §23-37-406.
Compensating use tax.
Applicability of provisions, §23-37-108.
Confidentiality of information.
Divulging of information by employees, §23-37-202.
Construction and interpretation.
Act controlling, §23-37-102.
Controlling nature of provisions, §23-37-102.
Conversion from mutual association to stock association.
Federal mutual to state stock association, §23-37-704.
Procedure, §23-37-703.
Conversion into federal association.
Procedure, §23-37-701.
Conversion into state-chartered associations.
Procedure, §23-37-702.
Conversion of national association into state bank, §23-48-504.
Corporate name.
Change of name, §23-37-313.
Exclusive use, §23-37-315.
Injunctions against violation, §23-37-315.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Damages.
Limitation on right to recover damages from association, §23-37-507.
Definitions, §23-37-101.
Regional savings and loan associations, §23-37-802.
Directors.
Bonds, surety, §23-37-314.
Standards of conduct.
Enumerated, §23-37-316.
Liability, §23-37-316.
Dividends.
Savings accounts, §23-37-403.
Additional provisions to coincide with federal associations, §23-37-403.
Division.
Administration, §23-37-206.
Creation, §23-37-206.
Employees.
Bonds, surety, §23-37-314.
Examinations.
Annual audit and examination procedure, §23-37-210.
Farm credit act of 1971.
Bond issues.
Authorized investments, §23-32-201.
Federal associations.
Applicability of provisions, §23-37-106.
Conversion into federal association.
Procedure, §23-37-701.
Fees.
Collection by supervisor, §23-37-107.
Membership charges.
Prohibited, §23-37-405.
Fiduciaries.
Savings accounts, §23-37-503.
Foreign associations.
Agents, §23-37-602.
Operation in city on state line, §23-37-601.
Former laws.
Associations incorporated under former laws conformed to provisions of act, §23-37-104.
Funds.
Expense fund required for mutual association, §23-37-306.
Gross receipts tax.
Applicability of provisions, §23-37-108.
Hearings.
Charters.
Applications, §23-37-309.
Injunctions.
Enforcement of chapter by injunction, §23-37-212.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Insurance.
Accounts, §23-37-308.
Investments, §23-63-823.
Investigations.
Supervisor.
Powers, §23-37-208.
Investments.
Insurance, §23-63-823.
Legal investments in associations, §23-37-512.
Legal investments in associations, §23-37-512.
Liens.
Savings accounts, §23-37-509.
Limitation of right to do business as savings and loan association, §23-37-103.
Loans.
Servicemen's Readjustment Act, §23-32-205.
Mandamus.
Enforcement of act by mandamus, §23-37-212.
Members.
Charges of membership.
Prohibited, §23-37-405.
Merger.
Power of association, §23-37-705.
Savings and loan association into state bank, §23-48-503.
Minors.
Savings accounts of minors, §23-37-501.
Miscellaneous powers of associations, §23-37-401.
Mortgage loans.
Sale of certain mortgage loans, §23-32-204.
Mutual associations.
Conversion from mutual association to stock association.
Federal mutual to state stock association, §23-37-704.
Procedure, §23-37-703.
Expense funds.
Required, §23-37-306.
Liquidation.
Distribution upon liquidation, §23-37-306.
Names.
Corporate name, §§23-37-313, 23-37-315.
Restrictions on use, §23-32-209.
Oaths.
Charter, §23-37-301.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Officers.
Bonds, surety, §23-37-314.
Offices.
Branch offices.
Approval or denial, §23-37-404.
Evidence of opening branch office, §23-37-404.
Location.
Change of location, §23-37-313.
Opening branch office, §23-37-404.
Orders.
Cease and desist orders.
Enforcement of chapter by, §23-37-212.
Power of attorney.
Savings accounts, §23-37-508.
Powers.
Additional powers of associations, §23-37-401.
Reorganization, merger or consolidation, §23-37-705.
Records.
Hearings and decisions, §23-37-204.
Regional savings and loan associations.
Acquisitions.
Holding company acquisitions not requiring prior approval, §23-37-806.
Permissible nondisqualified acquisitions, §23-37-808.
Prohibited acquisitions, §23-37-809.
Acts requiring prior approval of board, §23-37-804.
Applications for approval, §23-37-807.
Acts requiring prior approval of federal authorities, §23-37-805.
Board.
Acts requiring prior approval of, §23-37-804.
Applications for approval, §23-37-807.
Citation of subchapter, §23-37-801.
Definitions, §23-37-802.
Deposits.
Determination of total deposits, §23-37-812.
Federal home loan bank board.
Acts requiring prior approval of, §23-37-805.
Holding companies.
Acquisitions not requiring prior approval, §23-37-806.
Laws of Arkansas.
Applicability, §23-37-810.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Regional savings and loan associations —Cont'd
Registration, §23-37-811.
Reports, §23-37-811.
Title of subchapter, §23-37-801.
Violation of subchapter.
Penalties, §23-37-803.
Remedies, §23-37-803.
Releases.
Validity of release or acquittance by officers of corporation or association, §23-37-510.
Reorganization.
Power of association, §23-37-705.
Requirements, §23-37-307.
Rules and regulations.
Requirements for a new or existing association, §23-37-302.
Servicemen's Readjustment Act.
Loans, §23-32-205.
State-chartered associations.
Conversion into.
Procedure, §23-37-702.
Stock and stockholders.
Sales.
Commissions.
Prohibition on payment of commissions, §23-37-406.
Supervisor.
Communications from supervisor.
Manner of sending, §23-37-209.
Designation, §23-37-208.
Duties.
Generally, §23-37-207.
Enforcement of chapter, §23-37-201.
Fees.
Collection, §23-37-107.
Powers.
Generally, §23-37-207.
Investigatory powers, §23-37-208.
Records of hearings and decisions, §23-37-204.
Staff, §23-37-206.
Surplus.
Paid-in surplus requirements for permanent stock associations, §23-37-304.
Requirements.
Paid-in surplus requirements for permanent stock associations, §23-37-304.
Taxation.
Compensating use tax, §23-37-108.
Gross receipts tax, §23-37-108.

SAVINGS AND LOAN ASSOCIATIONS —Cont'd
Transaction of business.
Limitation of right to do business as savings and loan association, §23-37-103.
Trusts and trustees.
Action as trustee not deemed an investment advisor, §23-37-402.
Authority to act as trustee for certain trusts, §23-37-402.
Withdrawals from savings accounts.
Conflicting claims to accounts.
Withholding payments, §23-37-506.
Procedure, §23-37-505.

SAVINGS BANKS.
Certificates of deposit.
Agency designations, §§23-32-501 to 23-32-509.

SCHOLARSHIPS.
Arkansas scholarship lottery act, §§23-115-101 to 23-115-1102.
Lottery act, §§23-115-101 to 23-115-1102.

SCHOOL DISTRICTS.
Direct actions against insurers, §23-79-210.
Insurance.
Direct actions against insurers, §23-79-210.

SCHOOLS AND EDUCATION.
Arkansas scholarship lottery act, §§23-115-101 to 23-115-1102.
Insurance.
School districts.
Direct actions against insurers, §23-79-210.
Lottery for education, §§23-115-101 to 23-115-1102.

SEALS AND SEALED INSTRUMENTS.
Bank department, §23-46-203.
Insurance.
Commissioner, §23-61-102.
Rural telecommunications cooperatives.
Power to adopt and use corporate seal, §23-17-205.

SECRETARY OF STATE.
Foreign investor companies.
Service of process.
Authority to sue and be sued, §23-32-405.
Consent to service from secretary, §23-32-404.

SECRETARY OF STATE —Cont'd
Railroads.
Passes.
Permitted to accept and use pass, §23-4-804.

SECURED TRANSACTIONS.
Electric utility storm recovery securitization financing, §§23-18-901 to 23-18-912.
Insurance.
Creditor-placed insurance, §§23-101-101 to 23-101-114.

SECURITIES.
Electric cooperative corporations.
Exemptions from securities act, §23-18-330.
Insurance.
Holding companies.
Voting of securities, §23-63-520.
Lottery vendors.
Deposit of financial security, §23-115-502.
Trust companies.
Investments, §23-51-123.
Voting securities held in trust capacity, §23-51-190.

SECURITIES REGULATION.
Accounting.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.
Administration of chapter.
Securities commissioner, §23-42-201.
Advertising.
Filing requirement, §23-42-502.
Agents.
Registration, §23-42-301.
Application, §23-42-302.
Contents, §23-42-302.
Bonds, surety, §23-42-305.
Conditional or probationary registration, §23-42-308.
Denial of registration, §23-42-308.
Examination, §23-42-302.
Fees, §23-42-304.
Revocation of registration, §23-42-308.
Suspension of registration, §23-42-308.
Withdrawal of registration, §23-42-308.
Reports, §23-42-306.
Applicability of chapter, §23-42-103.
Assignments.
Unlawful acts by investment advisers, §23-42-307.

SECURITIES REGULATION —Cont'd
Bonds, surety.
Agents.
Registration, §23-42-305.
Broker-dealers.
Registration, §23-42-305.
Investment advisors.
Registration, §23-42-305.
Branch offices.
Registration, §23-42-301.
Broker-dealers.
Records of broker-dealers, §23-42-306.
Registration, §23-42-301.
Application, §23-42-302.
Bonds, surety, §23-42-305.
Capital requirements, §23-42-303.
Conditional or probationary registration, §23-42-308.
Denial of registration, §23-42-308.
Examination, §23-42-302.
Fees, §23-42-304.
Revocation of registration, §23-42-308.
Suspension of registration, §23-42-308.
Withdrawal of registration, §23-42-308.
Reports of broker-dealers, §23-42-306.
Citation of chapter, §23-42-101.
Civil liability.
Violation of chapter, §23-42-106.
Commissioner.
Administration of chapter, §23-42-201.
Appointment, §23-42-201.
Confidentiality of information, §23-42-203.
Cooperation with other regulatory agencies, §23-42-208.
Delegation of authority, §23-42-202.
Duties of commissioner.
Investigations, §23-42-205.
Enforcement of act.
By injunction or mandamus, §23-42-209.
Exempt from registration.
Registration or availability of exemption does not indicate approval by commissioner, §23-42-212.
Fees.
Disposition, §23-42-211.
Injunctions.
Enforcement of act by injunction, §23-42-209.
Investigations.
Public or private investigation, §23-42-205.

SECURITIES REGULATION —Cont'd
Commissioner —Cont'd
Mandamus.
Enforcement of act by mandamus, §23-42-209.
Money services, §§23-55-101 to 23-55-1006.
Mortgage banker, brokers and servicers.
Licensing and regulation generally, §§23-39-501 to 23-39-518.
Opinions.
Interpretive opinions, §23-42-206.
Orders of commissioner, §23-42-204.
Registration.
Rules, forms or orders of commissioner, §23-42-204.
Review of commissioner's order, §23-42-210.
Powers and duties.
Investigations, §23-42-205.
Records.
Copies, §23-42-206.
Generally, §23-42-206.
Inspection, §23-42-207.
Registration.
Availability of exemption or registration does not indicate approval by commissioner, §23-42-212.
Service of process.
Consent to service, §23-42-107.
Compliance with chapter.
Waiver.
Void, §23-42-109.
Confidentiality of information.
Commissioner, §23-42-203.
Conservators.
Commissioner.
Enforcement of act by injunction and ancillary remedies, §23-42-209.
Copies.
Records of commissioner, §23-42-206.
Covered securities, §23-42-509.
Criminal law and procedure.
Penalties for criminal violation, §23-42-104.
Prosecution of criminal offenses, §23-42-105.
Declaratory judgment.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.
Definitions, §23-42-102.
Disgorgement.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.

SECURITIES REGULATION —Cont'd
Enforcement of act.
By injunction or mandamus, §23-42-209.
Evidence.
Violation of provisions, §23-42-105.
Exemption from registration.
Commissioner.
Registration or availability of exemption does not indicate approval by commissioner, §23-42-212.
Exempted securities enumerated, §23-42-503.
Transactions and securities exempt from registration, §§23-42-503, 23-42-504.
Burden of proof of exemption, §23-42-506.
Denial or revocation of exemption, §23-42-505.
False or misleading statements unlawful, §23-42-110.
Fees.
Disposition, §23-42-211.
Registration statements, §23-42-404.
Fines.
Commissioner.
Enforcement of act by injunction and ancillary remedies, §23-42-209.
Violations of subchapter, §23-42-308.
Forms.
Commissioner.
Rules, forms and orders of commissioner, §23-42-204.
Fraud.
Securities fraud.
Criminal penalty for violations, §23-42-104.
Unlawful acts by investment advisers, §23-42-307.
Unlawful false or misleading statements, §23-42-110.
Injunctions.
Commissioner.
Enforcement of act by injunction, §23-42-209.
Investigations.
Commissioner.
Powers and duties, §23-42-205.
Investment advisers.
Records of investment advisers, §23-42-306.
Application, §23-42-302.
Bonds, surety, §23-42-305.
Conditional or probationary registration, §23-42-308.

SECURITIES REGULATION —Cont'd
Investment advisers —Cont'd
Records of investment advisers —Cont'd
Denial of registration, §23-42-308.
Examination, §23-42-302.
Fees, §23-42-304.
Registration, §23-42-301.
Revocation of registration, §23-42-308.
Suspension of registration, §23-42-308.
Withdrawal of registration, §23-42-308.
Reports of investment advisers, §23-42-306.
Supervision of activities of representatives and employees, §23-42-301.
Investor education fund, §23-42-213.
Issuers.
Records, §23-42-306.
Reports, §23-42-306.
Liability.
Civil liability, §23-42-106.
Limitation of actions.
Violation of provisions, §23-42-105.
Mandamus.
Commissioner.
Enforcement of act by mandamus, §23-42-209.
Misleading statements unlawful, §23-42-110.
Misrepresentation.
Unlawful acts by investment advisers, §23-42-307.
Notice.
Registration of securities by notification, §23-42-401.
Offer, sale or purchase of securities.
Sales literature or prospectus may be required to be filed, §23-42-502.
Unlawful acts in connection with offer, sale or purchase, §23-42-507.
Orders.
Review of commissioner's orders, §23-42-210.
Rules, forms and orders of commissioner, §23-42-204.
Penalties.
Criminal penalties for violations, §23-42-104.
Prospectus.
Filing requirement, §23-42-502.
Purchase of securities.
Unlawful acts by investment advisers, §23-42-307.
SECURITIES REGULATION —Cont'd
Purchase of securities —Cont'd
Unlawful acts in connection with offer, sale or purchase, §23-42-507.
Receivers.
Commissioner.
Enforcement of act by injunction and ancillary remedies, §23-42-209.
Reciprocity.
Commissioner.
Cooperation with other regulatory agencies, §23-42-208.
Records.
Agents, §23-42-306.
Broker-dealers, §23-42-306.
Commissioner, §23-42-206.
Inspection, §23-42-207.
Investment advisers, §23-42-306.
Issuers, §23-42-306.
Registration.
Commissioner.
Availability of exemption or registration does not indicate approval by commissioner, §23-42-212.
Coordination.
By coordination registration of securities, §23-42-402.
Information contained in registration statement, §23-42-402.
Exempt securities and transactions from registration, §§23-42-503, 23-42-504.
Burden of proof of exemption, §23-42-506.
Denial or revocation from exemption, §23-42-505.
Notice.
By notification registration of securities, §23-42-401.
Qualification.
By qualification registration of securities, §23-42-403.
Information contained in registration statement, §23-42-403.
Sale of unregistered nonexempt securities unlawful, §23-42-501.
Transactions and securities exempt from registration, §§23-42-503, 23-42-504.
Burden of proof of exemption, §23-42-506.
Denial or revocation of exemption, §23-42-505.

SECURITIES REGULATION —Cont'd
Registration statements.
Abandonment and withdrawal.
Conditions allowing commissioner to consider statement as abandoned and withdrawn, §23-42-404.
Amendment, §23-42-404.
Conditions for registration, §23-42-404.
Coordination.
By coordination registration of securities, §23-42-402.
Denial of registration statement, §23-42-405.
Duration, §23-42-404.
Effective period, §23-42-404.
Fee.
Filing fee, §23-42-404.
Filing, §23-42-404.
Fee, §23-42-404.
Qualification.
By qualification registration of securities, §23-42-403.
Revocation of registration statement, §23-42-405.
Suspension of registration statement, §23-42-405.
Withdrawal.
Conditions allowing commissioner to consider statement as abandoned and withdrawn, §23-42-404.
Reports.
Agents, §23-42-306.
Broker-dealers, §23-42-306.
Investment advisers, §23-42-306.
Issuers, §23-42-306.
Restitution.
Commissioner.
Enforcement of act by injunction and ancillary relief, §23-42-209.
Rights and remedies cumulative, §23-42-108.
Rules and regulations.
Commissioner.
Forms, rules and orders of commissioner, §23-42-204.
Sale or purchase of securities.
Unlawful acts by investment advisers, §23-42-307.
Unlawful acts in connection with offer, sale or purchase of securities, §23-42-507.
Sales literature.
Filing requirement, §23-42-502.
Service of process.
Commissioner.
Consent to service, §23-42-107.

SECURITIES REGULATION —Cont'd
Stock market.
Manipulation of market prohibited, §23-42-508.
Title of chapter, §23-42-101.
Unlawful acts, §23-42-307.
Offer, sale or purchase of securities, §23-42-507.
Unregistered securities.
Sale of unregistered nonexempt securities unlawful, §23-42-501.
Venue.
Violation of provisions, §23-42-105.
Waiver.
Compliance with chapter.
Void, §23-42-109.

SELF-INCRIMINATION.
Highways.
State highway and transportation department.
Witnesses.
No bar to testimony, §23-2-411.
Public service commission witnesses, §23-2-411.

SELF-SERVICE STORAGE INSURANCE.
Limited license to self-service storage facility to offer or sell, §23-64-233.

SELF-STORAGE FACILITIES.
Insurance.
Limited license to self-service storage facility to offer or sell, §23-64-233.
Self-service storage insurance.
Limited license to facility to offer or sell, §23-64-233.

SENIOR CITIZENS.
Continuing care providers, §§23-93-101 to 23-93-207.
Long-term care insurance generally, §§23-97-301 to 23-97-321.

SENTENCING.
Habitual offenders.
Used motor vehicle buyers protection, §23-112-603.
Motor vehicles.
Used motor vehicle buyers protection.
Repeat offenders, §23-112-603.

SERVICEMEN'S READJUSTMENT ACT.
Loans, §23-32-205.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.
Attorneys at law.
Legal insurance, §23-91-208.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS —Cont'd
Automobile clubs or associations, §23-77-106.
Banks.
Out-of-state banks, §23-48-1007.
Registered agent for service, §23-48-327.
Foreign investor companies.
Consent to service from secretary of state, §23-32-404.
Authority to sue and be sued, §23-32-405.
Fraternal benefit societies.
Registered agent, §23-74-701.
Highways.
State highway and transportation department, §23-2-405.
Complaints.
Service of copy of complaint, §23-3-119.
Life settlements.
Designation of agent for service of process, requirement, §23-81-803.
Motor carriers.
Agent for service, §23-13-216.
Complaints against carriers, §23-13-304.
Pipelines.
Foreign corporations, §23-3-108.
Public service commission, §23-2-405.
Orders, §23-2-421.
Public utilities.
Complaints to commission.
Service of copy of complaint, §23-3-119.
Foreign corporations, §23-3-108.
Railroads.
Livestock.
Killing or injuring.
Service upon agent of railroad company, §23-12-905.
Risk retention and purchasing groups.
Foreign risk retention groups.
Designation of commissioner as agent for, §23-94-205.
Purchasing groups.
Designation of commissioner as agent, §23-94-208.
Securities regulation.
Commissioner.
Consent to service, §23-42-107.
Trust companies.
Principal office, §23-51-172.

SETOFFS AND RECOUPMENT.
Banks.
Certificates of deposit.
Agency accounts, §23-47-308.

SETOFFS AND RECOUPMENT —Cont'd
Certificates of deposit.
Agency designation, §23-32-508.
Financial institutions.
Agency accounts, §23-32-508.

SETTLEMENT.
Life settlements, §§23-81-801 to 23-81-818.
Structured settlements, §§23-81-701 to 23-81-707.
Underinsured motorists.
Tentative agreement, §23-89-209.

SHERIFFS.
Railroads.
Passes.
Permitted to accept and use pass, §§23-4-804, 23-4-805.

SICKNESS INSURANCE.
Credit life and disability insurance, §§23-87-101 to 23-87-119.
Mutual assessment life and disability insurers, §§23-72-101 to 23-72-122.

SIGNATURES.
Insurance.
Records.
Electronic, electronic facsimile-transmitted or computer-readable signatures, §23-61-107.

SLEEPING CARS.
Rates and charges, §23-4-615.

SMALL BUSINESSES.
Insurance.
Small employer health insurance, §§23-86-201 to 23-86-209.
Small employer health insurance purchasing groups, §§23-86-501 to 23-86-512.

SMALL BUSINESS INVESTMENT COMPANIES.
Bank subsidiaries, §23-47-606.

SOCIAL WORKERS.
Any willing provider law enforcement.
Health care provider defined to include, §23-99-803.
Choice of health care providers by patients.
Health care provider defined to include, §23-99-203.

SOUND RECORDINGS.
Interception of telephone or telegraph messages, §23-17-107.

SOVEREIGN IMMUNITY.
Insurance.
Direct action against insurers, §23-79-210.

SPACE WALKS.
Insurance for amusements, §§23-89-501 to 23-89-518.

STATE INSURANCE DEPARTMENT PREPAID TRUST FUND.
Prepaid funeral benefits, §23-40-107.

STATE OF ARKANSAS.
Direct actions against insurer, §23-79-210.
Insurance.
Direct actions against insurer, §23-79-210.

STATE POLICE.
Motor vehicles.
Used motor vehicle buyers protection.
Disbursement of fines, §23-112-603.

STATUTE OF LIMITATIONS.
Banks.
Dissolution and liquidation.
Claims, §23-49-109.
Comprehensive health insurance pool.
Actions against pool or board of directors, §23-79-516.
Health insurance portability and accountability, §23-86-302.
Insurance.
Comprehensive health insurance pool.
Actions against pool or board of directors, §23-79-516.
Policies.
Suits against insurers, §23-79-202.
Loan brokers.
Advance fee loan brokers.
Action for violation of subchapter, §23-39-405.
Railroads.
Discrimination.
Actions for damages, §23-4-705.
Actions to recover penalty, §23-10-103.
Freight.
Damages for violations of act, §23-10-431.
Rural telecommunications cooperatives.
Suits against telecommunications companies or cooperatives, §23-17-237.
Securities regulations.
Violations of provisions, §23-42-105.

STATUTE OF LIMITATIONS —Cont'd
Trust companies.
Dissolution and liquidation.
Claims, §23-49-109.

STAYS.
Public utilities.
Acquisition, control or merger.
Stay of order pending review, §23-3-314.

STIPULATED PREMIUM INSURERS, §§23-71-101 to 23-71-116.
Applicability of code provisions, §23-71-102.
Miscellaneous provisions, §23-71-103.
Articles of incorporation, §23-71-107.
Attachment.
Benefits.
Not subject to attachment, §23-71-112.
Benefits.
Attachment, §23-71-112.
Contracts.
Use of name stipulated premium in contract, §23-71-106.
Conversions.
Legal reserve insurers, §23-71-116.
Defined, §23-71-101.
Deposits.
Guaranty fund deposit, §23-71-110.
Return of deposit, §23-71-110.
Exclusive nature of provisions, §23-71-102.
Formation.
Prohibited, §23-71-104.
Funds.
Guaranty fund deposit, §23-71-110.
Incorporation.
Prohibited, §23-71-104.
Insolvency, §23-71-113.
Insuring powers, §23-71-109.
Liabilities, §23-71-111.
Personal liability of officers, directors, stockholders or employees, §23-71-114.
Mergers, §23-71-115.
New insurers, §23-71-108.
Nonforfeiture provisions.
Required, §23-71-105.
Other provisions applicable, §23-71-103.
Policies.
Issuance, §23-71-111.
Use of name stipulated premium, §23-71-106.
Powers to insure, §23-71-109.

STIPULATED PREMIUM INSURERS —Cont'd
Reincorporation as.
Prohibited, §23-71-104.
Reserves.
Required, §23-71-105.
Scope of chapter, §23-71-102.
Solvency, §23-71-113.
Stock and stockholders.
Capital stock, §23-71-107.

STOCK AND STOCKHOLDERS.
Financial institutions.
Industrial loan institutions, §§23-36-102, 23-36-103.
Health maintenance organizations.
Investments, §23-76-117.
Industrial loan institutions, §§23-36-102, 23-36-103.
Savings and loan associations.
Sales.
Commission prohibited, §23-37-406.

STOCK MARKET.
Securities regulations.
Manipulation of market prohibited, §23-42-508.

STRUCTURED SETTLEMENTS, §§23-81-701 to 23-81-707.
Construction of provisions, §23-81-707.
Definitions, §23-81-702.
Disclosures required to be made to payee, §23-81-703.
Prohibited terms, §23-81-707.
Short title, §23-81-701.
Transfer of payment rights.
Approval required, §23-81-704.
Effects, §23-81-705.
Procedure for approval, §23-81-706.
Waiver prohibited, §23-81-707.

SUBPOENAS.
Greyhound racing.
Powers of racing commission, §23-111-205.
Highways.
State highway and transportation department.
Powers, §§23-2-313, 23-2-407.
Production of books and records, §23-2-408.
Refusal to comply, §23-2-409.
Horse racing.
Racing commission.
Powers, §23-110-205.

SUBPOENAS —Cont'd
Mortgage bankers, brokers and servicers.
Investigation or examination of loans or business, §23-39-514.
Motor carriers.
Complaints against carriers, §§23-13-302, 23-13-309.
Transportation safety agency, §23-13-210.
Public service commission.
Failure to comply, §23-2-409.
Powers of commission, §§23-2-313, 23-2-407.
Production of books and records, §23-2-408.
Trust companies.
Commissioner's powers, §23-51-190.

SUBROGATION.
Carriers.
Insurance.
Uninsured motorist liability insurance, §23-16-304.
Health insurance.
Recovery from third parties, §23-79-146.
Health maintenance organizations.
Recovery from third parties, §23-79-146.
Hospital and medical service corporations.
Recovery from third parties, §23-79-146.
Insurance.
Casualty insurance.
Injured person subrogated to right of insured, §23-89-101.
Insurer making payment, §23-89-405.
Life and health insurance guaranty association.
Subrogation rights, §23-96-114.
Recovery from third parties, §23-79-146.
Railroads.
Freight.
Damages.
Liability of initial carrier, §23-10-303.
Underinsured motorists, §23-89-209.

SUBSIDIARIES.
Insurance.
Holding companies, §23-63-505.

SUBSTANCE ABUSE.
Insurance.
Care and treatment of alcohol and drug dependency.
Insurers transacting health, accident or disability insurance in state.
Requirements of group policies, contracts and plans providing hospital and medical coverage, §23-79-139.
Railroads.
Safe transportation of railroad employees by contract carriers.
Testing of driver, §23-16-505.

SUNDAY.
Horse racing.
Racing meets.
Sunday racing, §23-110-402.

SURETY INSURERS, §§23-63-1001 to 23-63-1004.
Estoppel.
Denying corporate power to be surety, §23-63-1004.
Expenses.
Allowance of bond expense, §23-63-1001.
Individual rights.
Insurer's rights same as individual, §23-63-1003.
Sole surety on court, judicial and other bonds, §§23-63-1001, 23-63-1002.

SURPLUS LINES INSURANCE.
Actions against insurer, §23-65-318.
Affidavits.
Broker's affidavit, §23-65-306.
Agents.
Brokers may accept business from agents, §23-65-309.
Brokers.
Acceptance of business from agents, §23-65-309.
Affidavit, §23-65-306.
Compliance with provisions.
Penalty for failure to comply, §23-65-316.
Licenses.
Revocation, §23-65-317.
Surplus line brokers, §23-65-308.
Quarterly statement, §23-65-314.
Records, §23-65-313.
Tax on surplus line brokers, §23-65-315.
Withdrawal of approval of insurer.
Notification of brokers, §23-65-319.

SURPLUS LINES INSURANCE —Cont'd
Changes in insurance, §23-65-311.
Claim loss information.
Policyholder's right to information, §23-65-311.
Compliance with provisions.
Penalty for failure to comply, §23-65-316.
Contracts.
Endorsement, §23-65-307.
Definitions, §23-65-304.
Domestic insurers, §23-65-320.
Evidence of insurance, §23-65-311.
Exemptions from surplus line law, §23-65-302.
Losses.
Liability of insurer, §23-65-312.
Multistate agreements or contracts.
Applicability, §23-65-402.
Authorized, §23-65-401.
Committee approvals, §23-65-403.
Scope, §23-65-401.
Nonadmitted insurers, §23-65-303.
Premiums.
Unearned premiums.
Liability of insurer as to losses and unearned premiums, §23-65-312.
Procurement, §23-65-305.
Records.
Production on order, §23-65-104.
Surplus line brokers, §23-65-313.
Reports.
Independently procured coverages, §23-65-103.
Quarterly statement, §23-65-314.
Service of process.
Actions against insurer, §23-65-318.
Solvent insurers, §23-65-310.
Taxation.
Independently procured coverages, §23-65-103.
Title of subchapter, §23-65-301.
Unearned premiums.
Liability of insurer, §23-65-312.

SURVEILLANCE.
Interception of telephone or telegraph messages, §23-17-107.

SURVIVING SPOUSES.
Insurance.
Group and blanket health insurance.
Continuation of coverage upon change in marital status, §23-86-114.

T

TAMPERING.
Lotteries.
Penalty for tampering with equipment, §23-115-902.

TAXATION.
Admission tax.
Greyhound racing, §23-111-510.
Horse racing, §23-110-411.
Attorneys at law.
Legal insurance.
Premiums, §23-91-226.
Captive insurance companies.
Premium tax, §23-63-1614.
Charitable bingo and raffles.
Excise taxes, §§23-114-601 to 23-114-606.
Credit unions.
Extent of taxation, §23-35-103.
Electric cooperative corporations, §23-18-328.
Excise taxes.
Charitable bingo and raffles, §§23-114-601 to 23-114-606.
Fraternal benefit societies.
Exemptions from taxation, §23-74-504.
Greyhound racing.
Admission tax, §23-111-510.
Disposition of taxes, §23-111-104.
Health maintenance organizations.
Premiums and copayments.
Tax on, §23-76-131.
Horse racing.
Admission tax, §23-110-411.
Disposition of taxes, §23-110-104.
Hospital and medical service corporations.
Exemptions, §23-75-120.
Premium tax, §23-75-119.
Hospitals.
Exemptions.
Hospital and medical service corporations, §23-75-120.
Legal insurance.
Premiums, §23-91-226.
Motor carriers.
Municipalities may not tax, §23-13-103.
Rural telecommunications cooperatives.
Exemptions, §23-17-230.
Savings and loan associations.
Compensating use tax, §23-37-108.
Gross receipts tax, §23-37-108.
Water power companies.
Power used exclusively for taker's purposes, §23-18-410.

TAX EXEMPTIONS.
Fraternal benefit societies, §23-74-504.
Rural telecommunications cooperatives, §23-17-230.

TAXICABS.
Motor carrier act of 1955.
Exemptions, §23-13-206.
Documents required to be in possession of exempt carrier, §23-13-265.

TELECOMMUNICATIONS.
Adjustment of rates, §23-17-407.
Administrator, Arkansas high cost fund, §23-17-404.
Assessments to ensure proper funding to program participants, §23-17-418.
Agreements for special terminating access rates, §23-17-121.
AHCF charge for providers, §23-17-404.
Arkansas calling plan fund, §23-17-404.
Arkansas universal service fund.
Transfer of funds and administration to Arkansas high cost fund, §23-17-404.
Assessments to ensure proper funding to AHCF program participants.
Administrator, Arkansas high cost fund, §23-17-418.
Basic local exchange service.
Rates, §23-17-407.
Rural companies, §23-17-412.
Calling plans in telephone exchanges, §23-17-120.
Certificates of public convenience and necessity.
Competing local exchange carrier, §23-17-409.
Competing local exchange carriers, §23-17-409.
Rural companies, §23-17-410.
Contracts for exclusive privileges.
Prohibited, §23-17-105.
Deaf and hearing impaired.
Surcharges to provide telecommunications for deaf and hearing impaired, §23-17-119.
Definitions, §23-17-403.
Universal telephone service act, §23-17-301.
Discrimination prohibited, §23-17-113.
Electing companies, §23-17-406.

TELECOMMUNICATIONS —Cont'd
Eligible carriers, §23-17-405.
Emergency communications.
Immediate dispatch of public messages during war or civil commotion, §23-17-106.
Extended area service, §23-17-414.
Extension of services to citizens not served by wire line.
Grants, §23-17-404.
Fees.
Initiation of residential telephone service.
Payments of fees in installments, §23-17-116.
Surcharges to provide communications for deaf and hearing impaired, §23-17-119.
Funds.
Arkansas calling plan fund, §23-17-404.
Arkansas high cost fund (AHCF), §23-17-404.
Funding, §23-17-418.
Arkansas universal service fund.
Transfer of funds and administration to Arkansas high cost fund, §23-17-404.
Extension of facilities fund, §23-17-404.
Grants.
Extension of services to citizens not served by wire line, §23-17-404.
Greyhound racing.
Wagering.
Patrons with money on deposit placing wager by telephone or mobile device, §23-111-508.
Horse racing.
Wagering.
Patrons with money on deposit placing wagers by telephone or mobile devices, §23-110-405.
Interception of messages, §23-17-107.
Intrastate carrier common line charges, §23-17-416.
Rates, §23-17-404.
Intrastate carrier common line pool advisory procedural board, §23-17-417.
Intrastate interexchange message to be terminated over switched network.
Transmitting telephone number of originating party sending message to terminating telecommunications providers, §23-17-415.

TELECOMMUNICATIONS —Cont'd
Legislative findings, §23-17-402.
Lifeline individual verification effort corporation, §§23-16-401 to 23-16-413.
Mobile telecommunications place of primary use.
Database for vendors, §23-17-413.
Negligence.
Damages for mental anguish, §23-17-112.
Penalties.
Refusal to transmit message, §23-17-108.
Petitions.
Change in basic local exchange service rates.
Rural companies, §23-17-412.
Powers.
Construction and maintenance of lines, §23-17-101.
Public service commission.
Calling plans in telephone exchanges, §23-17-120.
Railroads.
Right of railroads to operate telegraphs and telephones, §23-17-102.
Rate cap, adjustment, §23-17-407.
Rates, §§23-17-407, 23-17-408.
Intrastate carrier common line charges, §§23-17-404, 23-17-416.
Rural companies, §23-17-412.
Universal service charge to providers, §23-17-404.
Refusal to transmit message, §23-17-108.
Regulatory reform, §23-17-411.
Residential service.
Fees for initiation of service.
Installment payments, §23-17-116.
Right of entry.
Construction purposes, §23-17-104.
Rights of way.
Condemnation upon failure to secure, §23-17-103.
Rural companies, §§23-17-410, 23-17-412.
Rural telecommunications cooperatives, §§23-17-201 to 23-17-242.
Special terminating access rates.
Agreements for, §23-17-121.
Surcharges to provide telecommunications for deaf and hearing impaired, §23-17-119.
Switched-access services.
Rates, §23-17-407.
Rural companies, §23-17-412.

TELECOMMUNICATIONS —Cont'd
Title, §23-17-401.
Transmission of messages.
Generally, §23-17-106.
Refusal to transmit message, §23-17-108.
Unbundled network elements.
Prices for, §23-17-409.
Universal service, §23-17-404.
Universal telephone service act.
Assessments.
Establishment of fund by assessing interexchange carriers, §23-17-304.
Citation, §23-17-301.
Commission.
Administration and distribution of fund, §23-17-307.
Allocation of fund, §23-17-306.
Defined, §23-17-303.
Fund.
Duties of commission, §23-17-304.
Declaration of general assembly, §23-17-302.
Definitions, §23-17-303.
Effective date, §23-17-305.
Fund.
Administration, §23-17-307.
Allocations, §23-17-306.
Assessment.
Assessing interexchange carriers, §23-17-304.
Created, §23-17-304.
Distribution, §23-17-307.
Effective date, §23-17-305.
Purpose of fund, §23-17-302.
Interexchange carriers.
Defined, §23-17-303.
Interexchange communication services.
Defined, §23-17-303.
Legislative policy, §23-17-302.
Local exchange carriers.
Allocation of fund, §23-17-306.
Defined, §23-17-303.
Name of act, §23-17-301.
Vandalism.
Injuring equipment.
Misdemeanor, §23-17-107.
War.
Immediate dispatch of public messages, §23-17-106.
Failure to give immediate dispatch.
Misdemeanor, §23-17-106.

TELEGRAPHS.
Rates and charges, §23-17-110.

TELEVISION.
Portable electronics insurance, §§23-88-501 to 23-88-507.

TELEVISION —Cont'd
Video service act, §§23-19-201 to 23-19-210.

TEMP AGENCIES.
Professional employer organizations, §§23-92-401 to 23-92-419.

TEMPOROMANDIBULAR JOINT DISORDER.
Health insurance.
Optional coverage to be offered, §23-79-150.
Health maintenance organizations.
Optional coverage to be offered, §23-79-150.
Hospital or medical services corporations.
Optional coverage to be offered, §23-79-150.

TENANTS BY THE ENTIRETIES.
Banks.
Multiple-party accounts, §23-47-204.

TERM LIMITATIONS.
Public officers and employees.
Terms of office, §23-2-101.

TEST TUBE BABIES.
Health insurance.
In vitro fertilization coverage required, §23-85-137.
Insurance.
Group and blanket health insurance.
Coverage required, §23-86-118.

THEFT.
Insurance.
Diversion or appropriation of funds by licensees, §23-64-223.

TIME.
Public service commission.
Appeals.
Notice of appeal, §23-2-423.
Rehearings.
Application for, §23-2-422.

TITLE INSURANCE, §§23-103-401 to 23-103-417.
Access to public records, §23-103-417.
Agents.
Restrictions on activities, §23-103-409.
Audit of insurer, §23-103-411.
Authorized activities of insurers, §23-103-404.
Limitations, §23-103-405.
Board of directors of insurer.
Appointment restrictions, §23-103-412.
Contracts between agency and insurer, §23-103-407.

TITLE INSURANCE —Cont'd
Definitions, §23-103-402.
Determination of insurability.
Prerequisite to policy issuance, §23-103-408.
Disciplinary actions and other penalties, §23-103-416.
Disclosures to policyholders, §23-103-413.
Employment restrictions of insurers, §23-103-412.
Examination of books and records of insurers, §23-103-406.
Inventory of policy forms and numbers, §23-103-410.
Investments.
Special investments by title insurer, §23-63-832.
License requirement, §23-103-403.
Notice of availability of closing protection, §§23-103-405, 23-103-413.
Reserves, §23-63-614.
Restrictions on activities of agents, §23-103-409.
Restrictions on activities of insurers, §23-103-405.
Retention of records, §23-103-414.
Rights of policyholders, §23-103-413.
Rules generally, §23-103-415.
Rules regarding audits, §23-103-411.
Search requirements, §23-103-408.
Settlement protection, §23-103-405.
Title of provisions, §23-103-401.
Violation of provisions, §23-103-416.

TORTS.
Insurance.
Casualty insurance.
Retention of tort liability, §23-89-206.
Insured not subject to suit for torts.
Suits against insurers, §23-79-210.
Lottery commission, claims against, §23-115-208.

TRANSFERS TO MINORS.
Financial institutions.
Agency designation on certificates of deposit, §23-32-506.

TRANSPORTATION.
Public service commission.
Free transportation for commissioners and employees, §23-2-109.

TRAVEL INSURANCE.
Defined, §23-64-202.
Limited lines travel insurance producers.
Defined, §23-64-202.

TRAVEL INSURANCE —Cont'd
Limited lines travel insurance producers —Cont'd
Issuance of limit lines license, §23-64-202.
Travel retailer.
Authority to offer, §23-64-202.

TREASURER OF STATE.
Railroads.
Passes.
Permitted to accept and use pass, §23-4-804.

TRESPASS.
Railroads.
Boarding trains, §23-12-802.

TRUST COMPANIES, §§23-51-101 to 23-51-199.
Acquisition, §§23-51-134 to 23-51-139.
Appeal from adverse decision, §23-51-137.
Application, §23-51-135.
Criminal penalties for violations, §23-51-139.
Enforcement, §23-51-139.
Commissioner's powers not limited, §23-51-138.
Hearing, §23-51-136.
Limitations on acquisition of control, §23-51-134.
Purchase of assets of another trust company, §23-51-154.
Transfers of acquisition.
Commissioner's powers not limited, §23-51-138.
Voting securities, §23-51-140.
Administrative orders.
Commissioner, §23-51-188.
Affiliates.
Trustees, §23-51-193.
Amendment of bylaws, §23-51-141.
Appeals.
Acquisition.
Appeal from adverse decision, §23-51-137.
Commissioner hearings, §23-51-112.
Applications.
Acquisition, §23-51-135.
Charter, §23-51-106.
Hearing and decision, §23-51-108.
Notice and investigations, §23-51-107.
Protests, §23-51-108.
Merger, §23-51-151.
Private trust companies.
Exemptions from chapter, §23-51-119.

TRUST COMPANIES —Cont'd
Articles of association.
Amendment, §23-51-114.
Contents, §23-51-105.
Series of shares.
Establishment, §23-51-115.
Assessments.
Examinations, §23-51-185.
Assets.
Pledge of assets, §23-51-133.
Purchase of assets of another trust company, §23-51-154.
Sale of assets, §23-51-155.
Voluntary liquidation, §23-51-161.
Authority to act as fiduciary, §23-51-165.
Bank holidays, §23-48-103.
Banks.
Liquidation of trust company.
Applicability of Banking Code, §23-51-164.
Subsidiary trust companies, §§23-47-801 to 23-47-807.
Trust companies no longer subject to banking laws, §23-48-102.
Board of directors, §23-51-142.
Criminal offenses, §23-51-144.
Fiduciary responsibilities.
Duties, §23-51-146.
Officers, §23-51-143.
Placement of assets in business under control of commissioner, §23-51-163.
Bonds, surety.
Directors, officers and employees, §23-51-148.
Subsidiary trust companies.
Bond to secure performance, §23-47-806.
Branches.
Out-of-state trust companies, §23-51-175.
Powers, §23-51-171.
Bylaws, §23-51-141.
Capital.
Borrowing limits, §23-51-132.
Change in outstanding capital and surplus, §23-51-116.
Increases, §23-51-110.
Minimum requirement, §23-51-110.
Required, §23-51-110.
Safety and soundness factors, §23-51-110.
Surplus.
Increases and decreases, §23-51-116.
Capital notes or debentures, §23-51-117.

TRUST COMPANIES —Cont'd
Charters.
Activities not requiring a charter, §23-51-166.
Applications, §23-51-106.
Hearing and decision, §23-51-108.
Notice and investigations, §23-51-107.
Protests, §23-51-108.
Articles of association.
Amendment, §23-51-114.
Conversion of companies chartered under prior law, §23-51-113.
Issuance, §23-51-109.
Violations.
Commissioner to take possession, §23-51-162.
Citation of act, §23-51-101.
Commissioner.
Administrative orders, §23-51-188.
Emergency actions, §23-51-182.
Enforcement actions, §23-51-182.
Examinations, §§23-51-184, 23-51-185.
Notice and opportunity for hearing.
Commissioner's actions, §23-51-189.
Statements of condition and income, §23-51-186.
Supervision duties, §23-51-184.
Taking possession of trust company, §23-51-162.
Witness powers, §23-51-190.
Common trust funds.
Investments, §23-51-131.
Confidentiality of information.
Records, §23-51-187.
Conflict of laws.
Choice of law governing fiduciary investments, §23-51-199.
Choice of law governing trusts, §23-51-198.
Conflicts of interest.
Criminal violations, §23-51-145.
Interests in trust institutions, §23-51-196.
Trustees.
Disclosure, §23-51-195.
Contracts.
Dissolution and liquidation.
Rejection of executory contracts, §23-49-112.
Control.
Acquisition, §§23-51-134 to 23-51-139.
Control of commissioner.
Action by commissioner, §23-51-162.
Action by directors, §23-51-163.
Conversion.
Private to public trust companies, §23-51-120.

TRUST COMPANIES —Cont'd
Cooperative agreements.
Offices.
Examinations, §23-51-181.
Corporations.
Applicability of corporate laws, §23-51-111.
Credit extensions.
Lending limits, §23-51-128.
Criminal law and procedure.
Acquisition violations, §23-51-139.
Conflicts of interest, §23-51-145.
Falsification of information, §23-51-144.
Reports of apparent crimes, §23-51-149.
Definitions, §23-51-102.
Delegation of fiduciary responsibility, §23-51-192.
Deposits.
Investment by deposit of trust funds with itself, §23-51-130.
Subsidiary trust companies, §23-47-805.
Designation as trustee, §23-51-197.
Powers generally, §23-51-167.
Records.
Distinct fiduciary records, §23-51-147.
Voting securities, §23-51-190.
Directors.
Bonds, surety, §23-51-148.
Qualifications, §23-51-142.
Removal, §23-51-191.
Dissolution and liquidation, §§23-49-101 to 23-49-120.
Articles of dissolution, §23-49-117.
Execution and filing, §23-49-118.
Banking code.
Application of, §23-51-164.
Certificate of dissolution, §23-49-118.
Claims.
Presentation and notice, §23-49-109.
Commissioner taking possession, §§23-51-162, 23-51-163.
Contracts.
Rejection of executory contracts, §23-49-112.
Definitions, §23-49-101.
Federal deposit insurance agency.
Subrogation to rights of depositors, §23-49-113.
Injunction against commissioner, §23-49-103.
Leases.
Rejection of leases, §23-49-112.
Payment of claims, §23-49-111.

TRUST COMPANIES —Cont'd
Dissolution and liquidation —Cont'd
Possession by department, §23-49-102.
Injunction against commissioner, §23-49-103.
Notice of possession, §23-49-105.
Termination, §23-49-104.
Voluntary placement, §23-49-120.
Presentation of claims.
Late claims, §23-49-110.
Receiver.
Actions for enforcement of rights, §23-49-116.
Appointment, §23-49-106.
Powers, §23-49-107.
Safe deposit boxes.
Notice of safekeeping, §23-49-115.
Sale of assets, §23-49-108.
Statute of limitation on claims, §23-49-109.
Successors to fiduciaries, §23-49-114.
Voluntary liquidation, §§23-49-119, 23-51-156 to 23-51-161.
Emergency actions.
Commissioner, §23-51-182.
Employees.
Bonds, surety, §23-51-148.
Removal, §23-51-191.
Enforcement actions.
Commissioner, §23-51-182.
Evidence.
Commissioner's witness powers, §23-51-190.
Examinations.
Assessments, §23-51-185.
Commissioner's duties, §23-51-184.
Offices, §23-51-181.
Timing, §23-51-185.
Voluntary liquidation, §23-51-159.
Exempt activities, §23-51-166.
Exemptions.
Private trust companies, §23-51-118.
Application for exemption, §23-51-119.
Facilities.
Investments, §23-51-121.
Falsification of information, §23-51-144.
Family members.
Private trust companies, §23-51-118.
Favoritism.
Transactions with management or affiliates, §23-51-145.
Federal deposit insurance agency.
Dissolution and liquidation.
Subrogation to rights of depositors, §23-49-113.

TRUST COMPANIES —Cont'd
Fees.
Acquisition.
Filing fee, §23-51-135.
Application for charter.
Filing fees, §23-51-106.
Examination assessment, §23-51-185.
Fiduciaries.
Dissolution and liquidation.
Successors to fiduciaries, §23-49-114.
Fiduciary relationships.
Companies authorized to act as fiduciary, §23-51-165.
Fiduciary responsibilities.
Affiliates, §23-51-193.
Board of directors.
Duties, §23-51-146.
Delegation, §23-51-192.
Grandfather clause.
Companies chartered under prior law, §23-51-113.
Hazardous conditions.
Defined, §23-51-102.
Taking possession by commissioner, §23-51-162.
Hearings.
Acquisition.
Control, §23-51-136.
Petition for review of adverse decision, §23-51-137.
Appeals.
Commissioner hearings, §23-51-112.
Charter applications, §23-51-108.
Commissioner's actions.
Notice and opportunity for hearing, §23-51-189.
Procedure, §23-51-112.
Injunctions.
Dissolution and liquidation.
Injunction against commissioner, §23-49-103.
Interest.
Capital notes or debentures, §23-51-117.
Interstate trust offices.
Out-of-state trust companies.
Acquisition, §23-51-177.
Investigations.
Charter application, §23-51-107.
Merger applications, §23-51-151.
Investments, §§23-51-121 to 23-51-133.
Borrowing limits, §23-51-132.
Choice of law governing, §23-51-199.
Common trust funds, §23-51-131.
Deposits of trust funds, §23-51-130.
Facilities, §23-51-121.
Lease-purchase agreements, §23-51-129.

TRUST COMPANIES —Cont'd
Investments —Cont'd
Loans.
Lending limits, §23-51-128.
Mutual funds, §23-51-126.
Pledge of assets, §23-51-133.
Real estate, §23-51-122.
Securities, §23-51-123.
State trust company facilities, §23-51-121.
Stocks.
Acquisition of own stock, §23-51-124.
Subsidiaries, §23-51-125.
Trade or commerce.
Prohibited, §23-51-127.
Lease-purchase agreements.
Authorized investments, §23-51-129.
Leases.
Dissolution and liquidation.
Rejection of leases, §23-49-112.
Limitations on acquisition of control, §23-51-134.
Loans.
Borrowing limits, §23-51-132.
Investments.
Lending limits, §23-51-128.
Lending limits, §23-51-128.
Merger, §§23-51-150 to 23-51-153.
Application, §23-51-151.
Approval of Commissioner, §23-51-152.
Articles of merger.
Application, §23-51-151.
Authority, §23-51-150.
Dissenters' rights, §23-51-153.
Effective date, §23-51-152.
Purchase of assets of another trust company, §23-51-154.
Mutual funds.
Investments, §23-51-126.
Names.
Registration, §23-51-169.
Restrictions on use, §23-32-209.
Notice.
Change of location of principal office, §23-51-172.
Charter application, §23-51-107.
Commissioner's actions.
Notice and opportunity for hearing, §23-51-189.
Dissolution and liquidation.
Notice of claims, §23-49-109.
Notice of possession by department, §23-49-105.
Notice of safekeeping of safe deposit boxes, §23-49-115.
Possession by department, §23-49-102.

TRUST COMPANIES —Cont'd
Notice —Cont'd
Establishment of offices, §23-51-173.
Out-of-state offices, §23-51-174.
Out-of-state trust companies.
Establishment or acquisition of office, §23-51-178.
Notice of changes in control, §23-51-183.
Private trust companies.
Revocation of exemption, §23-51-119.
Oaths.
Commissioner's power to administer, §23-51-190.
Officers, §23-51-143.
Bonds, surety, §23-51-148.
Removal, §23-51-191.
Offices, §23-51-173.
Cooperative agreements.
Examinations, §23-51-181.
Examinations, §23-51-181.
Interstate trust offices.
Out-of-state trust companies, §23-51-176.
Notice of establishment, §23-51-173.
Out-of-state offices, §23-51-174.
Out-of-state trust companies, §23-51-175.
Acquisition of office, §23-51-177.
Conditions for approval, §23-51-179.
Interstate trust offices, §23-51-176.
Notice requirements, §23-51-178.
Principal office, §23-51-172.
Reports, §23-51-181.
Organization, §23-51-104.
Out-of-state offices, §23-51-174.
Out-of-state trust companies.
Branches, §23-51-175.
Changes in control.
Notice, §23-51-183.
Notice of changes in control, §23-51-183.
Offices, §23-51-175.
Acquisition of office, §23-51-177.
Additional offices, §23-51-180.
Conditions for approval, §23-51-179.
Interstate trust offices, §23-51-176.
Notice requirements, §23-51-178.
Powers, §23-51-168.
Requirements, §23-51-175.
Penalties.
Violation of administrative orders, §23-51-188.
Permits.
Voluntary liquidation, §23-51-158.
Pledge of assets, §23-51-133.
Possession by commissioner, §23-51-162.
Action of directors, §23-51-163.

TRUST COMPANIES —Cont'd
Powers, §§23-51-104, 23-51-167.
Branches, §23-51-171.
Out-of-state trust companies, §23-51-168.
Trust business, §23-51-170.
Principal office, §23-51-172.
Priorities.
Dissolution and liquidation.
Payment of claims, §23-49-111.
Private trust companies, §23-51-118.
Applications.
Exemptions from chapter, §23-51-119.
Conversion to public trust companies, §23-51-120.
Requirements, §23-51-119.
Real estate.
Investments.
Limitations, §23-51-122.
Records.
Confidentiality, §23-51-187.
Distinct fiduciary records, §23-51-147.
Removal of directors, officers and employees, §23-51-191.
Reports.
Apparent crimes, §23-51-149.
Offices, §23-51-181.
Statements of condition and income, §23-51-186.
Voluntary liquidation, §23-51-159.
Rules and regulations, §23-51-103.
Commissioner's authority, §23-51-184.
Safe deposit boxes.
Dissolution and liquidation.
Notice of safekeeping, §23-49-115.
Sale of assets, §23-51-155.
Voluntary liquidation, §23-51-161.
Sale of goods.
Engaging in commerce prohibited, §23-51-127.
Securities.
Investments, §23-51-123.
Voting securities held in trust capacity, §23-51-190.
Service of process.
Principal office, §23-51-172.
Shareholders.
Voluntary liquidation, §§23-51-156 to 23-51-161.
Statements of condition and income, §23-51-186.
Statute of limitations.
Dissolution and liquidation.
Claims, §23-49-109.
Stocks.
Acquisition of own stock, §23-51-124.

TRUST COMPANIES —Cont'd
Stocks —Cont'd
Capital notes or debentures, §23-51-117.
Changes in outstanding capital and surplus.
Limitations, §23-51-116.
Establishing series of shares, §23-51-115.
Investments.
Acquisition of own stock, §23-51-124.
Subpoenas.
Commissioner's powers, §23-51-190.
Subsidiaries.
Investments, §23-51-125.
Subsidiary trust companies, §§23-47-801 to 23-47-807.
Affiliated bank defined, §23-47-801.
Bank holidays, §23-48-103.
Bond to secure performance, §23-47-806.
Definitions, §23-47-801.
Deposits, §23-47-805.
Dissolution and liquidation, §§23-49-101 to 23-49-120.
Exclusion of accounts from substitution agreement, §23-47-804.
Formation, §23-47-802.
Qualification as successor fiduciary, §23-47-807.
Substitution agreements with affiliates, §23-47-803.
Exclusion of certain accounts, §23-47-804.
Suspension of operations.
Effect, §23-51-163.
Title of act, §23-51-101.
Transactions with management or affiliates, §23-51-145.
Transfers against public interest.
Acquisition procedure does not limit, §23-51-138.
Trust business.
Activities not requiring a charter, §23-51-166.
Authority to act as fiduciary, §23-51-165.
Powers, §23-51-170.
State trust institutions, §23-51-167.
Trustees.
Affiliates, §23-51-193.
Conflicts of interest.
Disclosure, §23-51-195.
Delegation of fiduciary responsibility, §23-51-192.
Designation, §23-51-197.
Fees, §23-51-194.

TRUST COMPANIES —Cont'd
Unclaimed property.
Liquidated state trust company, §23-51-160.
Voluntary liquidation.
Authority to liquidate, §23-51-158.
Examination, §23-51-159.
Permit, §23-51-158.
Procedure, §23-51-157.
Reports, §23-51-159.
Sale of assets, §23-51-161.
Shareholder action, §23-51-157.
Shareholder vote, §23-51-156.
Terms, §23-51-156.
Unclaimed property, §23-51-160.
Witnesses.
Commissioner's powers, §23-51-190.

TRUST FUNDS.
Common trust funds.
Investments by trust companies, §23-51-131.

TRUSTS AND TRUSTEES.
Affidavits.
Banks as trustees, §23-47-706.
Banks.
Trust powers generally, §§23-47-701 to 23-47-710.
Credit unions.
Shares issued in trust, §23-35-503.
Insurance.
Criminal investigation division trust fund, §§23-100-101 to 23-100-107.
Investments.
Equipment trust certificates, §23-63-819.
Investment trust securities, §23-63-820.
Minimum basic benefit policies.
Qualified trust, §23-98-104.
Defined, §23-98-102.
Formation, §23-98-104.
Investments.
Insurance.
Equipment trust certificates, §23-63-819.
Investment trust securities, §23-63-820.
Oaths.
Banks as trustees, §23-47-706.
Railroads.
Corporations.
Voting of stock by trustee, §23-11-212.
Savings and loan associations.
Action as trustee not deemed an investment advisor, §23-37-402.

TRUSTS AND TRUSTEES —Cont'd
Savings and loan associations —Cont'd
Authority to act as trustee for certain trusts, §23-37-402.

U

UNCLAIMED PROPERTY.
Lotteries.
Prizes or proceeds unclaimed, §23-115-403.
Trust companies.
Liquidated state trust company, §23-51-160.

UNDERINSURED MOTORISTS, §23-89-209.
Annual report by insurers, §23-63-1202.
Set-offs or reduction of recovery, §23-89-403.

UNDERWRITERS.
Policies of insurance, §23-79-117.
Title insurance.
Underwriting contracts, §23-103-407.

UNFAIR AND DECEPTIVE TRADE PRACTICES.
Comprehensive health insurance pool.
Unfair referrals to plan, §23-79-513.
Fraternal benefit societies.
Unfair methods of competition and unfair and deceptive acts and practices, §23-74-610.
Life settlements, §23-81-817.
Physicians and surgeons.
Health services performed by professionals not licensed under Arkansas medical practices act, §23-79-114.
Prepaid funeral services.
Prohibited acts, §23-40-126.

UNIFORM LAWS.
Money services act, §§23-55-101 to 23-55-1006.

UNINSURED MOTORISTS.
Casualty insurance.
Bodily injury coverage.
Required, §23-89-403.
Definition of uninsured motorist, §23-89-401.
Insurers' solvency protection.
Applicability, §23-89-402.
Property damage coverage, §23-89-404.
Subrogation of insurer making payment, §23-89-405.

UNITED STATES.
Industrial loan institutions.
Loans insured by federal government, §23-36-110.

UNIVERSAL TELEPHONE SERVICE ACT, §§23-17-301 to 23-17-307.

USED MOTOR VEHICLES.
Buyers protection, §§23-112-601 to 23-112-617.
Advertising.
Information required in printed advertisements, §23-112-610.
Definitions, §23-112-602.
Disbursement of fines, §23-112-603.
Legislative findings, §23-112-601.
Powers generally, §23-112-604.
Service and handling fees, §23-112-617.
Violations.
Enumeration, §23-112-605.
Penalty, §23-112-603.

USE OF CREDIT INFORMATION IN PERSONAL INSURANCE ACT, §§23-67-401 to 23-67-415.

UTILITY FACILITY ENVIRONMENTAL AND ECONOMIC PROTECTION ACT, §§23-18-501 to 23-18-530.

V

VALUED POLICY LAW.
Property insurance, total loss by fire or natural disaster, §23-88-101.

VANDALISM.
Telecommunications.
Injuring equipment, §23-17-107.

VENDING MACHINES AND DEVICES.
Insurance, §23-64-221.

VENDORS AND PURCHASERS.
Lottery vendors, §§23-115-501 to 23-115-504.

VENUE.
Charitable bingo and raffles.
Injunctions, §23-114-704.
Electric utility storm recovery securitization financing.
Venue of actions to enforce security interests, §23-18-907.
Insurance.
Delinquency proceedings, §23-68-103.
Mutual assessment life and disability insurers.
Actions, §23-72-120.

VENUE —Cont'd
Insurance —Cont'd
Suits against insurers, §23-79-204.
Motor vehicle dealers.
License discipline.
Hearings, §23-112-503.
Recreational vehicle franchises.
Actions to recover damages, §23-112-1022.
Securities regulation.
Violation of provisions, §23-42-105.

VIATICAL SETTLEMENTS.
Life settlements, §§23-81-801 to 23-81-818.

VICARIOUS LIABILITY.
Professional employer organizations.
Liability limitation, §23-92-409.

VIDEO GAME SYSTEMS.
Portable electronics insurance, §§23-88-501 to 23-88-507.

VIDEO LOTTERIES.
Prohibition, §§23-115-407, 23-115-408.

VIDEO SERVICES, §§23-19-201 to 23-19-210.
Applicability of other laws, §23-19-210.
Arkansas video service act.
Title of act, §23-19-201.
Build-out or other requirements of providers.
Prohibition, §23-19-207.
Certificate of franchise authority issued by secretary of state.
Application, §23-19-203.
Fees, §23-19-204.
Termination of certificate, §23-19-203.
Use of public rights-of-way by holder, §23-19-205.
Channel capacity for public, educational, government use.
Designation, §23-19-209.
Customer service standards, §23-19-208.
Definitions, §23-19-202.
Video service provider fee, §23-19-206.
Denial of access.
Prohibition, §23-19-207.
Franchise from political subdivision.
Expiration, §23-19-203.
Required to provide services, §23-19-203.
PEG channels, §23-19-209.
Prohibited activities by providers, §23-19-207.

VIDEO SERVICES —Cont'd
Public, education and government access channels, §23-19-209.
Public-rights-of-way.
Use by holder of certificate of franchise authority, §23-19-205.
Remedies for noncompliance, §23-19-207.
Video service provider fee, §23-19-206.

W

WAIVER.
Fraternal benefit societies.
Laws of societies, §23-74-204.
Insurance.
Policies.
Claims administration not waiver, §23-79-127.
Securities regulation.
Compliance with chapter.
Void, §23-42-109.

WAR.
Telecommunications.
Immediate dispatch of public messages, §23-17-106.
Failure to give immediate dispatch.
Misdemeanor, §23-17-106.

WARRANTIES.
Recreational vehicle franchises.
Warrantor's warranty obligations, §23-112-1016.

WATER AMUSEMENT ATTRACTIONS.
Insurance for amusements, §§23-89-501 to 23-89-518.

WATERCOURSES.
Corporations.
Water power companies, §§23-18-401 to 23-18-410.
Electricity.
Navigable water crossings.
General provisions, §§23-3-501 to 23-3-513.
Pipelines.
Navigable water crossings.
General provisions, §§23-3-501 to 23-3-513.
Public utilities.
Navigable water crossings, §§23-3-501 to 23-3-513.
Water power companies, §§23-18-401 to 23-18-410.

WATER UTILITIES.
Damages.
Eminent domain, §23-18-406.
Land flooded or taken.
Assessment of damages by court, §23-18-405.
Dams.
Erection of dams to develop electric power, §23-18-402.
Time to begin work, §23-18-404.
Railroads in connection with construction of dam.
Acquisition of right of way.
Eminent domain, §23-18-407.
Use of power.
Application for permit to use power, §23-18-403.
Compensation, §23-18-403.
Eminent domain.
Costs.
Payment, §23-18-406.
Damages.
Assessment, §23-18-406.
Jury, §23-18-406.
Payment, §23-18-406.
Forfeiture of rights for failure to pay, §23-18-406.
Deposit required pending litigation, §23-18-406.
Forfeiture of rights for failure to deposit, §23-18-406.
Guardian ad litem.
Proceedings against infants and insane persons, §23-18-406.
Insane persons.
Proceedings against.
Guardian ad litem appointed, §23-18-406.
Jury.
Assessment of compensation, §23-18-406.
Minors.
Proceedings against infants.
Guardian ad litem appointed, §23-18-406.
Notice.
Nonresident landowners, §23-18-406.
Petition, §23-18-406.
Contents, §23-18-406.
Power of eminent domain, §23-18-406.
Railroads in connection with construction of dam.
Acquisition of right of way, §23-18-407.
Guardian ad litem.
Eminent domain.
Proceedings against infants and insane persons, §23-18-406.

WATER UTILITIES —Cont'd
Jury.
Eminent domain.
Assessment of compensation, §23-18-406.
Legislative declaration.
Water power part of public domain, §23-18-401.
Mental health.
Eminent domain.
Proceedings against infants and insane persons.
Guardian ad litem appointed, §23-18-406.
Minors.
Eminent domain.
Proceedings against infants.
Guardian ad litem appointed, §23-18-406.
Notice.
Eminent domain.
Notice to nonresident landowners, §23-18-406.
Petitions.
Eminent domain, §23-18-406.
Public domain.
Water power declared part of public domain, §23-18-401.
Public use.
Power to be for public use, §23-18-408.
Railroads.
Right of way for railroad in connection with construction of dam.
Acquisition.
Eminent domain, §23-18-407.
Taxation.
Power used exclusively for taker's purposes, §23-18-410.
Use of power.
Terms and conditions, §23-18-409.

WEEDS.
Railroads.
Permitting certain weeds to seed on right-of-way, §23-12-202.

WHISTLE AND BELL ACT.
Railroads, §23-12-410.

WIRETAPPING.
Interception of telephone or telegraph messages, §23-17-107.

WIRE TRANSFERS.
Uniform money services act, §§23-55-101 to 23-55-1006.

WITNESSES.
Greyhound racing.
Powers of racing commission as to, §23-111-205.

WITNESSES —Cont'd
Highways.
State highway and transportation department.
Compelling attendance and testimony, §23-2-313.
Contempt proceedings.
Refusal to attend or testify, §23-2-410.
Depositions, §23-2-412.
Exemption from prosecution based on testimony, §23-2-411.
False testimony.
Penalties, §23-1-105.
Fees, §23-2-414.
Mileage, §23-2-414.
Penalties.
False testimony, §23-1-105.
Perjury, §23-2-413.
Refusal to attend or testify.
Contempt proceedings, §23-2-410.
Self-incrimination.
No bar to testimony, §23-2-411.
Subpoena power, §§23-2-313, 23-2-407.
Horse racing.
Racing commission.
Powers as to, §23-110-205.
Insurance.
Burial associations.
Hearings, §23-78-108.
Commissioner, §23-61-301.
Testimony compelled, §23-61-302.
Unfair competition and trade practices.
Hearings, §23-66-209.
Mileage allowance.
Public service commission, §23-2-414.
State highway and transportation department, §23-2-414.
Perjury.
Public service commission, §23-2-413.
State highway and transportation department, §23-2-413.
Public service commission.
Compelling attendance and testimony, §23-2-313.
Depositions, §23-2-412.
Exemption from prosecution based on testimony, §23-2-411.
False testimony.
Penalty, §23-1-105.
Fees, §23-2-414.
Mileage, §23-2-414.
Perjury, §23-2-413.

WITNESSES —Cont'd
Public service commission —Cont'd
Refusal to attend or testify.
Contempt proceedings, §23-2-410.
Self-incrimination.
No bar to testimony, §23-2-411.
Subpoena power, §§23-2-313, 23-2-407.
Railroads.
Discrimination.
Officers compelled to attend and testify, §23-10-110.
Self-incrimination no bar, §23-10-110.
Trust companies.
Commissioner's powers, §23-51-190.

WOMEN.
Lotteries.
Participation by female-owned businesses, §23-115-401.

WORKERS' COMPENSATION.
Appeals.
Insurance.
Mandatory insurance plan.
Appeals of orders or rulings, §23-67-309.
Insurance.
Logging association policies, §§23-67-311, 23-67-312.
Mandatory insurance plan.
Appeal of orders or rulings, §23-67-309.
Cancellation of policy, §23-67-307.
Citation of subchapter, §23-67-301.
Compliance with provisions of chapter.
Failure of insurer to comply, §23-67-308.
Coverage, §23-67-304.
Employers entitled to insurance, §23-67-306.
Establishment, §23-67-303.
Operation, §23-67-303.
Participation required, §23-67-305.
Regulation, §23-67-303.
Rules and regulations, §23-67-310.
Purpose of subchapter, §23-67-302.
Rates and charges, §23-67-219.
Selection, §23-67-313.
Notice.
Increase in premiums, §23-79-151.
Rules and regulations.
Insurance.
Mandatory insurance plan, §23-67-309.

WRITINGS.
Highways.
State highway and transportation department.
Orders.
Written orders required, §23-2-420.